

**ORGANISATION AND WORKING OF THE
MINISTRY OF HOME AFFAIRS, GOVERNMENT
OF INDIA, 1947-67.**

**THESIS SUBMITTED FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY
IN POLITICAL SCIENCE**

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A B S T R A C T

With the transfer of political power and the subsequent adoption of a Constitution based on democratic and secular principles the areas of administrative authority and activity enhanced considerably. The adoption of planning for economic development, the clamour for state enterprises and nationalisation of banking and trade and increased governmental activities for the welfare of citizens further armed the administration with increasing responsibilities. In the wake of independence India had to face unprecedented situations such as mass disorders in the shape of ugly communal falre-ups which was deemed to be an inevitable result of the partition of the subcontinent on the basis of two-nation theory, the large scale influx of refugees and the question of integration of princely states which were anxious to retain their separate political entities. Consequently the Ministry of Home Affairs was vested with the responsibility of maintaining peace and order. Besides, Ministries of States and Rehabilitation were created to deal with the princely states and the refugees respectively. The Ministry of States was however liquidated in 1955 and its functions were transferred to the Ministry of Home Affairs. With the passing of the States Reorganisation Act(1956) the categorisation of States into three parts was discontinued and fourteen states were carved out of what remained of the Indian territory after partition. Ins^tead of providing a solution to the problem of states the Act worsened the situation by recognising

language as one of the criteria for according statehood. The creation of the state of Andhra Pradesh gave a fillip to the champions of linguism and in course of time, the number of States and union territories shot up. In the face of demonstrations, agitations, strikes in favour of separate statehood, the Ministry of Home Affairs was dragged into the vortex of a preplexing dilemma. Besides these complex political problems, the administrative structure left over by the British was retained along with its peculiar anomalies. The British administrative structure had focussed its attention mainly on the maintenance of internal peace and tranquillity with a view to tightening its stranglehold over the natives and maintaining its hegemony. Independence brought about a total change in the outlook and the very tone and tenor of administration had to be reoriented. But old traditions die hard and therefore, the task of reforming the administrative structure along with their procedures and attitudes adopted by the administrative personnel were bound to test the imagination and patience of the ablest of reformers. The main problem that the realities of a developing polity presented were the proper coordination of the subsequently created administrative agencies with departments already in existence, their purposeful adjustment of procedures with the previous ones so that the Parkinson's law may not operate. This was by no means an easy task due to a number of historical, political and sociological factors.

The present thesis is an attempt to examine the organisation and working of the Ministry of Home Affairs in the Government of Indian union. The first chapter deals with the organisation of the Ministry in a general way, and a brief historical survey of the working of its various attached and subordinate offices, its divisions and sections. It also includes a brief study of the Department of Administrative Reforms, which was created in March 1964 to study the administrative structure and recommend measures for its improvement. Not satisfied with the output of this department and in order to speed up the pace of administrative reforms, a high power commission namely the Administrative Reforms Commission with very wide terms of reference was set up in January 1966. It was constituted with a view to examining all aspects of administration and suggest ways and means for reform of administrative agencies and their re-organisation, where-ever necessary. It functioned through twenty study teams and thirteen study groups for examining in depth, different sectors of administration. The Commission submitted 22 reports to the Government of India and with their submission it was wound up on June 30, 1970. The validity of its findings has been examined.

The Second chapter makes a critical study of the O and M Division, its achievements and failures, the Welfare Division, Administrative Vigilance Division, Central Bureau of Investigation, Public Grievances Section, and the Department of Administrative

Reforms. An attempt has been made to make an analytical study of all these bodies especially the Central Bureau of Investigation in relation to the Ministry. The O and M Division has done far reaching work in the direction of administrative reform but there were certain hidden pitfalls which the Division itself failed to avoid. As a result it has fallen a prey to inertia which it was intend to remedy and is now unable to cope up with the problems besetting the administration. Suggestions have been made for strengthening the O and M units to bring about greater efficiency in administration. The dilatory manner in which the Administrative Vigilance Division is working is woefully inadequate to check the fast spreading evil of corruption. Enlargement of its staff and enhancement of its powers have to be undertaken. Also an attempt has been made in the Second chapter to give an objective analysis of the working of the Home Ministry in relation to the Central Bureau of Investigation. The cavalier manner in which the Home Ministry treated the recommendations of the CBI in relation to the activities of Biju Patnaik and Biren Mitra have been discussed. The need for strengthening the machinery for the ventilation of public grievances, which have shot up in recent years due to maladministration and indifference of officials, has also been highlighted. Inefficiency to a large extent is the outcome of outdated routines and procedures, insufficient technical know-how, lack of training in the modern techniques of administration and the absence of proper relationship between the subordinates and Head of the

Department. The urgency for eradicating these bottlenecks has been emphasised.

The Third chapter is a study of the working of the Ministry of Home Affairs in relation to public services. With the setting up of the Department of Personnel in August 1970 the subject of Public Services was transferred from the Home Ministry to the newly constituted Department. Since the thesis covers the period prior to 1970, a critical study of the functioning of the Ministry in regard to Public Services has also been incorporated. The various problems bedevilling Public Services especially the All-India Services, inadequate training, matters pertaining to promotion and pay, the various measures undertaken by the Ministry to improve the morale of Public Services, and finally the problem of corruption-in the light of the recommendations made by the Santhanam Committee have been discussed at length in this chapter.

Civil Service constitute the backbone of administration. The quality of administration is largely shaped by the quality of civil service. Utmost care, therefore, should be taken to evolve better policies of recruitment, training, promotion etc. of the civil servants. Recruitment constitute the 'cornerstone of the whole Public Personnel structure'. An attempt has been made in this chapter to give an account of the policy of recruitment, its drawbacks and irregularities. Next to recruitment comes training of the civil servants. The problem of training

has acquired new dimensions in India today with an expanding administrative machinery making it imperative for constituting fresh services owing to a radical change in the nature of Governmental work following in the wake of independence; it has necessitated the Government to plan suitable training programmes and education courses in the light of the objectives of a plan-oriented economy and welfare state. Training is still to be attuned to the goals, which were conspicuous by their absence during the British regime. Training must aim at inculcating in the recruits respect for parliamentary democracy, secularism and Rule of Law. The Civil Service in India has been under the dominance of the Colonial Rule with an authoritarian outlook for about a century. The present day India has to perform altogether different functions which calls for an overall change in the attitudes of the Civil Servants. In view of the rising fissiparous tendencies in the country, training must aim at fostering among civil servants national outlook and integrated thinking for the good of the nation. Above all training ought to be plan and programme-oriented in the light of the lofty economic ideals which the country has set before itself.

The promotion policies also need a thorough re-orientation. Personal files or Confidential reports are yet another bottleneck generating frustration and discontent among the subordinate staff. Instead of utilising the personal files for promotion purposes, it would be in the fitness of things if a Departmental

Promotion Committee is constituted in all Departments and Ministries. The Department of Personnel should be entrusted with the over-all control of public services. The present three tier arrangement-control by the Ministries of Home, (now the Department of Personnel) Finance and the Union Public Service Commission-ought to be discontinued, as that would lead to duplication of work and violate the principle of Unity of Command.

Pay of the Civil Servants should receive the immediate attention of the Government. Frequent strikes by the civil servants in regard to pay etc. is deplorable. Mere appointing ad hoc pay commissions is no substitute for faulty economic policies resulting in inflation, rise in the price level and devaluation. The problem of corruption too require equally greater attention of the Ministry. The structures of Justice Anand Narayan Mullah of the Allahabad High Court in regard to the functioning of the Police, the Kripalani Railway Committee Report, the Santhanam Committee Report on Corruption should make the Ministry realise the far reaching potentialities of the problem. The machinery to that effect, the Lokpal, the Lokyakutas, the CBI, the CVC etc. ought to be strengthened, along with vigorous implementation of the penal laws of the Country.

The Fourth chapter of the thesis deals with the Centre-State relationships and the role of the Ministry. The fast changing panorama of Centre-State relations have added new

dimensions to the Indian federalism. With the end of the monopoly of the Congress Rule and with different political parties or their coalitions assuming power in different states, the theory and practice of the Indian federalism as it existed in the first few years of independence has undergone a drastic change. The chapter analyses the circumstances in which the Constitution assumes more or less unitary shape; the manner in which the Home Ministry foists Presidential rule on the express recommendations of its agents, the Governors, which is, more often than not, a 'command performance'. An attempt has been made to analyse as to how far such actions are in consonance with the letter and spirit of the Constitution. The concluding paragraphs of the chapter emphasis the need for greater rapport between the Centre and States in view of economic planning. The advent of nationalisation of industries and socialisation of services, the creation of more and more all-India services with a view to bring about integrated administration, the various measures on an all India character for the welfare of the people at large, the various schemes and programmes to combat the growing lawlessness on a country-wide basis, and above all the adoption of effective measures for the defense of the state against the threats to solidarity and territorial integrity have tended to enhance the powers of the Centre vis a vis the States. On the other hand the fast developing regional aspirations, growing demand of regional autonomy especially in financial matters and for the purpose of more equitable distribution of resources and balanced economic growth, the evergrowing linguistic chauvinism

and claims to cultural identity, the states are asserting themselves. The emergence of these regional political entities in search of separate political and cultural identities has made the situation *explosive* from the point of view of law and order and internal stability. Such a baffling situation presents before the Home Ministry a cruel dilemma. In the striking of a just balance between these two conflicting postures lies the future development of Indian federation.

The fifth chapter examines the problem of law and order with reference to the communal riots in the country. Communal violence has become a regular phenomenon in Indian politics. The partition of the sub-continent twenty five years ago still inhibits the inter-communal relations and it is frequently bolstered up to incite one community against the other. These tensions have their origins in history but are responsible for the repeated holocausts due to the psychological gaps sought to be justified on cultural and religious grounds. These tensions are intensified and culminate into recurring outbursts due to lack of emotional integration in all sections of people and paucity of national consciousness. This flamboyant chauvinism erupts into communal violence which brings credit to no community. The Ministry of Home Affairs has the responsibility to face this problem intermittently. Political and administrative factors are equally responsible for this continuing menace. Fascist political parties, narrow-minded leaders, the yellow press and the incompetent administrators are equally to blame for this unmitigated evil. This chapter gives an insight into

the evil of lawlessness flourishing due to the incompetence of the administration which is unable to deal with it effectively. A brief account has also been given regarding the role of the RSS in Indian politics, whose cultural ideology and political programmes are mainly responsible for this emotional cleavage between the two major communities of India. Muslim communal organisations have also their own share of responsibility in creating a 'persecution complex' in the rank and file of the minority community. Peace and order can be possible only when the forces preaching hatred and creating suspicion between communities are crushed. Tranquillity remains out of the question so long as some political parties strive to impose a cultural, religious and linguistic uniformity upon the minorities. It would be fatal if in sheer exhaustion or out of intimidation if the Ruling party and the administration were to abandon the struggle and a bad compromise would be tantamount to abandonment, which might even lead to the collapse of our democratic edifice. It is very often said that the ghost of communalism will haunt the nation so long as India and Pakistan are in a state of confrontation. This argument is used as stock-in-trade to blackmail the Indian Muslims to hide the administrative failures in preventing lawlessness. Such a view regarding the communal problem will lead to the total destruction of all democratic ideals instead of providing an everlasting solution. The roots of confrontation between the two communities will go deep in the Indian history and continue until the cause of justice triumphs no matter how heavy the odds. Peace and order so necessary to eradicate poverty, hunger, squalor and disease

cannot come through militant nationalism or the revival of old traditions but by total preparedness not only in a military context, to hit at the root of the problem.

Individual liberty is the crux of democracy. But the exigencies of state sometimes result in the suppression of individual freedom for purposes of state expediency. The problem, therefore, is to safeguard individual freedom without undermining national interests or jeopardising the security of the state. The Indian constitution provides a detailed chapter on Fundamental Rights to be enjoyed by all citizens without any discrimination. At the sametime it also empowers the s-tate to impose reasonable restrictions on any of the freedoms of the citizens enshrined in the constitution with a view to safeguarding the safety and integrity of the nation while at the sametime upholding the dignity of the individual. But the way the emergency provisions have been utilised by the Home Ministry to subserve its political ends, the manner in which the Preventive Detention Act and the Defence of India Rules have been exploited in order to crush or silence political opposition, do not in any way justify the reasons for which these provisions are incorporated in the Constitution. The application of the Defence of India Rules in Kerala on the eve of General Elections (1965) is one of the many glaring examples of political partisanship. An attempt has been made to examine this proposition in the light of the decisions of the Supreme Court and the High Courts. The policy pursued by the Home Ministry in regard to protecting and safeguarding the

the rights and freedom of the individual has not been guided by either national interests or public interests, but the Ministry has been trimming her sails as the political wind blow from one direction or another. As a safeguard against the frequent encroachments by the executive on the rights of individual, the whole lot of emergency provisions have to thoroughly reconsidered and suitably modified. The Supreme Court, if entrusted with the task of reviewing the detention orders will go a long way in ensuring justice and fairplay. It ought to be remembered that constant vigilance and not wilful victimisation is the permanent bulwark of democracy.

The conclusion highlights the need for reorganisation of the Home Ministry, reform in the attitudes and outlook of administration in general so that the loopholes responsible for administrative inefficiency may be plugged. The problem of relation between the Civil Servants and the Ministers has also been examined and suggestions made to rationalise them so that efficiency may not be sacrificed at the altar of democracy. Much remains to be done to streamline the administrative procedures in order to expedite administrative work.

The inability of the Home Ministry to prevent communal clashes, regional disputes, violent agitations and individual cases of crime, inefficiency and corruption have added to the problem already confronting a developing economy. Due to these recurring disturbances the image of India as a secular, peace-loving nation is tarnished. Due to the suppression of liberties,

the claim of India to be a liberal democracy is subjected to serious doubts. Due to evergrowing incidents of crime and the inability of the administration to trace the criminals and cope with the situation, the confidence of the common man in the law and order machinery is shaken. The responsibility of the Home Ministry and its subordinate agencies in this regard has been examined in the thesis and suggestions have been made, wherever feasible, to streamline the whole machinery of administration from top to bottom so as to prevent the administration from becoming negligent and wasteful.

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Dated;

(MOHAMMAD MURTAZA KHAN)

PREFACE

Organisation constitutes the very backbone of administration. The nature of administration is largely determined by the quality of organisation of the agencies from the top to bottom and the way they carry out their functions and obligations. Division of labour, specialisation of functions, coordination of activities, delegation and devolution of powers and the adoption of modern techniques of administration have added new dimensions to the problem of organisation. The problem of organisation, in fact, is the problem of division and coordination of work among various units of administration. The deployment of personnel and coordination of work has to be done at all levels. The powers and functions of the Government of India are divided among Ministries and Departments. Allocation of Government business is regulated by rules of business framed under Article 77(3) of the Constitution. A Ministry may comprise one department or more than one department. It is through the various Ministries and Departments that the day to day administrative affairs are carried out. The Ministry of Home Affairs is one of the key Ministries of the Government of India and covers a broad spectrum of administrative activities having an important bearing on the integrity and stability of the nation and the well being of its people.

The Ministry deals with the maintenance and enforcement of law and order, all matters pertaining to public services, matters relating to Centre-State relations and Union territories, welfare of scheduled castes and backward tribes, administrative reforms

and a host of other activities. However, with the setting up of the Department of Personnel in August 1970, the subject of public services has been transferred from the Ministry to the newly constituted Department. For the effective performance of its divergent activities, it has its network spread throughout the length and breadth of the country. In a country like India with a huge population torn into a plethora of groups on grounds of religion, caste, creed, language and region, maintenance of law and order is undoubtedly a difficult task. To evolve out of this baffling entity, a compact and well-knit nation is a much difficult task.

The Ministry is no longer concerned with the maintenance of law and order only as was the case during the British regime. Today the Ministry has a positive role to perform. It has the responsibility of creating an atmosphere congenial for the healthy growth of democratic and secular traditions and Rule of Law. It is not, however, the complexity of the functions of the Ministry that matters, what matters is how it works, whether or not its objectives are being realised in the way they ought to be. Two decades of independence is, however, too brief a period to evaluate the utility of the Ministry. Yet these years are an index as to how the Ministry has been meeting the requirements of the country amidst a volley of problems and programmes which the Constitution solemnly pledges. How far it has been a success in the fulfilment of these objectives in the peculiar circumstances of India is a matter that calls for careful scrutiny.

This thesis attempts to make such a study in depth and in a fairly comprehensive manner. Further it seeks to focus the

attention of those who are directly or indirectly involved in the operation of its various agencies functioning under the Ministry. It is a historical study of the stages through which the growth of the Home Ministry has passed, an analytical study of the various branches of the Ministry's functions and a pragmatic study of the impact of Ministry on the socio-political attitudes of the people at large. I have made an attempt to utilise all the available material on the subject in the form of records, reports, books, brochures, periodicals and newspapers. In spite of the bureaucratic red-tape and the lurking suspicion of record-keeping agencies, I have tried to make the maximum use of the material provided by the Home Ministry Library. Most of the existing books on the subject are casual and superficial studies of a particular aspect. I have tried to present a comprehensive and well-knit work on various aspects of our administrative machinery and have tried to be as realistic and scientific in my approach as possible in the prevailing circumstances. I would, however, like to make it clear that the thesis is not based on the records of the Home Ministry.

(MOHAMMAD MURTAZA KHAN)

INTRODUCTION

A BRIEF HISTORY OF THE HOME DEPARTMENT (1843-1947)

A department in the governmental structure represents the largest subdivision or cross-section of its administrative structure, designed for the satisfactory discharge of its functions and responsibilities.¹ In other words, a department is the administrative unit with a secretary having administrative control over a part of the central secretariat for the performance of the functions assigned to it.

The history of the present departments can be traced back to the rule of East India Company. In the initial stages the East India Company was concerned more with trade and commerce and the official business of the Company was disposed of by the Governor-in-Council. In 1756 a Secret Committee of four members was constituted with a view to maintaining secrecy over the transactions of its business. A little later, the Court of Directors appointed a Select Committee to transact affairs with the country-Government and the neighbouring Powers. In due course this Committee replaced the Secret Committee and met for the first time on February 21, 1757.

With the increase in the activities of the Company, distribution of work became necessary and two departments, Public and Secret, were created in 1763. The Public Department was assigned matters relating to shipping, revenue, fortifications, appointments

1. Indian Institute of Public Administration, The Organisation of the Government of India (Asia Publishing House, New Delhi), 1958, p. 29.

etc. The Secret Department dealt with such matters as military plans, all transactions with the Country-Government and Colonial Powers etc. These two departments were placed under the charge of a secretary, but he had to maintain separate records for each of the Departments.

On the appointment of Clive as President and Governor, with command of the Company's military forces in 1765, the proceedings of the Secret Department were discontinued and a Select Committee of five members was revived. In 1771, the Board of Directors appointed a Committee of Revenue called the Comptrolling Committee of Revenue and the entire management of the revenue affairs (including the administration of criminal and civil justice) which formed part of the duties of the Select Committee before, was entrusted to this Committee. This Committee was superseded by the Revenue Board in 1772. Thus, the main Departments of the Government in Bengal in 1774, after it had become the Supreme Government on the passing of the Regulating Act of 1773, were the Public, Secret and Revenue Departments.²

Towards the end of 1776, a Military Board, in reality, a Military Department was formed for the purpose of recording of orders affecting the army, passed in the other Departments and all general orders of whatever nature and all memorials of officers respecting rank. The new Military Department was considered a branch of the Public Department which dealt with matters relating to general military subjects. This Military Department continued as such till it was absorbed in the Secret and Military Department, which was

2. Secretariat Training School, Organisational Set-up and Functions of the Ministries/Departments of the Government of India
(Ministry of Home Affairs, Government of India, New Delhi),
January 1964, p. 1.

created in 1786, along with the "Secret and Political Department", "the Secret and Foreign Department" and "Secret Department of Reform".³

In 1793 the Judicial Department was created and such matters as administration of justice, civil and criminal, were assigned to it. By the end of the 18th century the Departments of the Supreme Government of India were grouped under four secretaries to look after the four Departments viz. Public (including Commercial), Revenue and Judicial, Secret, Political and Foreign and Military. A chief secretary was assigned the overall charge and control of the Departments.

The Charter Act of 1833 introduced many changes in Administration. The Bengal Presidency was divided into the Presidency of Agra and the Presidency of Bengal. The Governor-General of Bengal became the Governor-General of India, working simultaneously as the Governor-General of Bengal as well. The Company was no longer a Commercial Department; consequently the Commercial Department ceased to exist and the Military and Secret Departments were transferred to the Government of India. The legislative functions became the monopoly of the Supreme Government. The remaining departments were grouped under two secretaries, one in charge of the general Foreign and Financial Departments and the other in charge of Secret, Political, Revenue and Judicial Departments. Further in 1835 a Legislative Department was added to the new set-up under the charge of a Judicial Secretary.

On April 29, 1843, the Governor-in-Council decided to

3. Ibid.

separate completely the Secretariat of the Government of India from that of Bengal. The former Government had earlier (1843) appointed a distinct secretary for its Financial Department and in May 1843, the other Departments were also separated. The Political, Foreign and Secret branches were placed under another secretary and the Department was called the Foreign Department of the Government of India and the remaining branches viz. Revenue, Separate Revenue-General, Marine, Judicial, Legislative and Ecclesiastical were placed under a Third Secretary and the Department was called the Home Department of the Government of India. No change was made regarding the Military Department.⁴

The Government of India Act 1853 abolished the legislative branch of the Home Department and all legislative functions were concentrated in the Council of India, which was constituted under the provisions of the Act of 1853, to which a legislative member was added.

With the creation of the Home Department, the Revenue Department was liquidated and revenue matters were placed under the Home Department. Besides, the Home Department dealt with such matters as maintenance of internal security, jails, police, education, hospitals, municipalities, local board etc.

The Act of 1858 terminated the Rule by the East India Company and the administration was taken over directly by the Crown. Consequently the Office of the Secretary of State for India was created and all the powers formerly exercised by the Court of

4. Indian Institute of Public Administration, The Organisation of the Government of India, p. 30.

Directors were transferred to him. However the Act did not bring about any major changes in the organisation of the Government.

In 1871, a separate Department of Revenue and Agriculture and Commerce was created, but in 1879, Commerce was incorporated in Finance, while Agriculture and Revenue were entrusted to Home Department. This arrangement also could not last long and on July 6, 1881, the Department of Home, Revenue and Agriculture was bifurcated into, Home Department and Revenue and Agriculture Department. The latter took over the charge of Land Revenue, Surveys, Agriculture and Horticulture, Minerals, Meteorology, Famine etc. The Department of Education was created in December 1910 and consequently Education was separated from the Home Department.⁵

The jurisdiction of the Home Department was further lessened in August 1921 by the transfer of medical administration from the Home Department to the Department of Education which was redesignated as Department of Education and Health.

By 1919 there were several departments in the Government of India viz. Foreign and Political, Home, Finance, Commerce including Railways etc. Each of these departments were administered by a Member of the Council, the Foreign and Political Department was under the charge of the Governor himself. The Home Department dealt with such subjects as the general internal administration of the country and internal politics, police and jails, law and justice, Indian civil service etc.

5. Secretariat Training School, Organisational Set-up and Functions of the Ministries/Department of the Government of India, p. 4.

The Act of 1919 introduced Dyarchy or 'double government'. It divided the provincial subjects into Reserved and Transferred. The Reserved subjects included administration of justice, police, irrigation and canals, land revenue and administration, newspapers etc., which were under the control of the Governor General-in-Council. The Transferred subjects contained local self-government, public health, education, agriculture etc. In the field of Transferred Subjects the Governor-General was bound to obey the orders of the Central Government. Law and order remained the responsibility of the Home Department.

By the Government of India Act 1935, Dyarchy was abolished in the provinces but it was continued at the Centre. The federal subjects were divided into Reserved and Transferred. The Reserved subjects were to be controlled by the Governor-General, assisted by 3 Councillors, at his discretion. The Transferred subjects were to be manned by the Governor-General and a Council of not more than ten Ministers appointed by him, but responsible to the Federal Legislature. The work and the control of the Home Department as regards provincial subjects was totally negligible. The administrative powers of the provinces were enhanced by the Act of 1935. The control of the Home Department in respect of those subjects as far as the provincial administration was concerned was practically nil. As the Maxwell Committee has put it; "the future position of the Home Department seems to be specially uncertain. Some of its present subjects could, and perhaps should be made over to the Legislative Department. For present purposes it can be assumed⁶ only that there will be a Home Department".

6. Maxwell Committee Report, Organisation And Procedure, 1937, p. 6.

In view of the constitutional changes brought about by the Act of 1935, and the expansion of the governmental work, the Foreign and Political Department was bifurcated into two distinct departments, the External Affairs Department and the Political Department. Other developments during this period include the splitting up of the Department of Industries and Labour into Department of Labour and Department of Communications. The Second World War further increased the responsibilities of the Government which resulted in the creation of new Departments.

It is to be noted that during the British period "the administrative control of superior services was dispersed in the departments of government controlling corresponding subjects, thus departing from the UK arrangement of vesting this responsibility in the Treasury. Till transfer of power, the main purpose of the Government was the maintenance of law and order and, therefore, the control of its executive instrument - the Indian Civil Service and the Indian Police Service - was retained by the Secretary of State, even after the grant of autonomy to the provinces in 1935. The Governor-General and the Governors had the right to act in their individual discretion and judgement when the security or stability of India or any of the provinces was endangered, and had special responsibilities in regard to all-India Service Personnel. It was logical, therefore, that the control of these two services should be entrusted to the Home Department, which had the primary responsibility for the maintenance of internal security. The responsibility for framing Rules and Regulations for the administration of services as a whole was also entrusted to the Home

Department and not to the Finance Department⁷.

The Home Department and the Finance Department constituted the most important Departments in the Government. The Home Department was responsible for maintaining internal peace and political stability and the Finance Department for maintaining financial stability. It was due to this fact that the two portfolios of Home and Finance were always held by British officials till the formation of the Interim Government in 1946. With the formation of the Interim Government, the powers were transferred from the British Government to the Interim Government. The entire central administration was organised in 18 departments arranged in 14 portfolios. The Departments of Home and Information and Broadcasting were amalgamated into one Department for reasons of administrative convenience. Independence brought practically no changes as far as the organisation of departments was concerned except that the nomenclature was changed from Departments to Ministries.

7. Ashok Chanda, Indian Administration (George Allen and Unwin, London), 1967, p. 210.

CHAPTER I

THE MINISTRY OF HOME AFFAIRS, ITS ORGANISATION AND FUNCTIONS (General)

In 1946 when the Congress and the Muslim League were brought together to form the last government of undivided India, there were about 18 Departments each with a secretary as the permanent head. The politicians who were members of the Viceroy's Executive Council were in overall charge of the Department/Departments, assigned to them. After independence the Executive Council was replaced by a Council of Ministers. The Council (Ministry) as a matter of fact never meets, the Cabinet was, from the very beginning, a small body and the real governing and decision making authority with the Prime Minister as its head. This system of arrangement is in consonance with unity of command and realisation of purpose. "The cabinet formed on August 15, 1947 was composed of a Prime Minister, a Deputy Prime Minister and twelve other Ministers. The existing arrangement of portfolios in the Interim Government was left undisturbed. ... The Prime Minister retained the portfolio of External Affairs which he held as a Member of the Council. Similarly Patel, who was named the Deputy Prime Minister retained his previous portfolio of Home, Information and Broadcasting and States. The remaining portfolios were distributed between the other Ministers. Shortly thereafter, a Minister without portfolio was added to the Council, who was subsequently entrusted with the task of making proposals on reorganisation of the machinery of government. Three Ministers of State and two Deputy Ministers were appointed in the second half of 1948. Though not included in the Cabinet, two of the Ministers of

State, were placed in independent charge of Ministries, one to hold the portfolio of Rehabilitation of refugees and the other to hold the portfolio of Information and Broadcasting, relieving the Deputy Prime Minister of his heavy responsibilities. The third Minister of State and two Deputy Ministers were attached to three existing portfolios to assist the cabinet Ministers in charge. Early in 1949, the chief whip was given the status of a Minister of State and designated Minister of Parliamentary Affairs".¹

A Ministry is responsible for the formulation of policy of the government within its sphere of responsibility. Usually a Secretary to the Government of India (an IAS/IPS officer in most cases) is the administrative head of a Ministry, who is the chief adviser of the Minister on all matters of policy and administration concerning his Ministry. Where the volume of work in a Ministry exceeds the manageable capacity of the secretary, two or more branches under the charge of a Joint Secretary, are created. In such cases, the responsibility of the Joint Secretary is complete in respect of all matters falling within his jurisdiction, subject, however, to the general control of the Secretary, for the administration of the Ministry as a whole.

The Ministry of Home Affairs works under the overall supervision of the Minister of Home Affairs, who is the political head of the Ministry. The administrative head is the Home Secretary, who renders advice to the Minister on all matters pertaining to the Ministry. All matters relating to law and order, High Courts and

1. Asok Chanda, Indian Administration (George Allen and Unwin), 1967, pp. 66-67.

Supreme Court, Administrative Reforms, relations with States, Language, border security, minorities etc. fall within the jurisdiction of the Home Secretary.

Besides, Home Secretary there is Secretary for Services whose work relates to matters concerning vigilance, UPSC, AIS, CBI, Manpower, Administration, etc. Then, there is Additional Secretary in the Ministry, in charge of matters relating to Union territories, Union territory cadres for IAS and IPS and Civil Services and Police Cadres for Union territories, NEFA, Indian Frontier Administrative Service, Zonal Councils etc. Besides, there is Additional Secretary who looks after all matters relating to Administrative Reforms. The Home Secretary is the general supervisor of the Ministry and coordinates the work of other secretaries. All matters relating to officers of the rank of Deputy Secretaries and above in the Ministry will be submitted to the Home Secretary.

A large number of functions have been assigned to the Home Secretary, Secretary (Services), Special Secretary (Union territories)² and inevitably it is impossible for any single individual to perform all these functions unaided. Therefore there are a number of Joint Secretaries working under them. For instance, the Home Secretary has under him about eight Joint Secretaries,³ each one of them looking after the subject/subjects assigned to them such as Political affairs, Border Security Force, Administrative Reforms, Kashmir Affairs, Parliamentary business and Rulers of former Indian States, entry of foreigners into India, grant of Indian citizenship,

2. See Appendix I,

3. See Appendix II, III, V, VI, VII, VIII.

warrant of precedence etc. Each Joint Secretary is assisted in his work by Under-Secretaries and in some cases by Officers on Special Duty.

In the same manner the Secretary (Services)⁴ has under him about 6 Joint Secretaries and one or two Officers on Special Duty, to look after matters relating to training programmes, Secretariat Training School, Police Training College etc. Each one of the Joint Secretaries deal with such matters as civil defence, Home Guards, Organisation and Methods Division, Central Secretariat Services, Manpower problems, Staff welfare etc. They are assisted in their work by Deputy Secretaries and Under Secretaries.

Similarly the Special Secretary (Union territories)⁵ has under him two Joint Secretaries - one for Union territories and the other for public relations. The Joint Secretary (Union territories) looks after all matters relating to Union territory cadres for IAS/IPS, Civil services and Police cadres for Union territories, Delhi Municipal Corporation, budgets and accounts, New Delhi Municipal Committee etc. The Joint Secretary, Public Relations, is in charge of such matters as Reorganisation of States, defence of India legislation and constitutional amendments, Zonal Councils etc. The two Joint Secretaries have under them a number of Deputy Secretaries each one of them looking after the work assigned to him. For example a Deputy Secretary supervises the work relating to Andaman, Nicobar and Laccadive Islands, etc.

4. With the creation of the Department of Personnel in 1970, the subject of Public Service has been transferred from the Home Ministry to the newly constituted Department.

5. See Appendix IV, IX, X.

To bring about efficient, expeditious and quick disposal of matters, the entire work of the Ministry is divided into various Sections, Branches and Divisions. A Section works under the general guidance of a Section Officer and a number of assistants, upper division clerks, lower division clerks etc. A Branch usually consists of two sections, whose supervision rests with the Branch Officer/Under Secretary. A division constitutes two branches with a Deputy Secretary to look after the work in the Division.

Ordinarily a Ministry/Department has in addition to having several sections dealing with the substantive work of the Ministry/Department (conveniently termed as "subject matter sections" for the sake of analysis), a Registration and Recording Section, an Establishment Section, an O and M Section and Finance and Accounts Section.⁶

The hierarchical arrangements within an Executive Department fall generally into three categories, viz. Top Management, Middle Management and the Lower levels. Although there cannot be any hard and fast line of demarcation between each of them, yet the levels of work and responsibility are well marked in this country. The Top Management is generally manned by the members of the ICS, the IAS and Central Services, Middle Management by the members of the Central Secretariat Service and other field Officers and the Lower levels by Ministerial services.⁷

The top management consists of both political and administrative sides. The political side comprises the Cabinet Ministers,

6. A Sample Survey in Delhi: The Citizen and Administration, 1964, pp. 5-6.

7. Ibid., pp. 7-8.

Ministers of State and Deputy Ministers⁸ the administrative side includes Secretaries, Joint Secretaries and Deputy Secretaries. The top management is concerned with policy matters, direction and control. "The lower levels of the services collect information and data, the middle levels sift and analyse it in relation to the issues involved and top administrative echelons wait to assist the political head in formulating policy and ensuring its application. ... The function of the middle levels of Executive Department (e.g. Under Secretaries and senior grade Section Officers) are partly executorial.⁸ The Lower levels generally perform duties of routine clerical nature".

For the proper execution of policies the Ministry has Attached⁹ and Subordinate Offices. The Attached Offices provide executive direction required for the enforcement of the policies laid down by the Ministry. Besides they also serve as the nexus of technical information and act as advisory body to the Ministry on technical aspects of the question dealt with by the Ministry. The Subordinate Offices function under the direction of an Attached Office or in cases where the executive direction involved is negligible directly under the Ministry.

Functions

The Ministry of Home Affairs covers a broad spectrum of administrative activity having an important bearing on the nation's stability and well-being and on the maintenance of a climate which

8. Ibid.

9. See Appendix XI.

is necessary for the country's sustained growth and rapid forward movement.¹⁰ The jurisdiction of the Ministry has increased further since 1955 with the merger of the Ministry of States. The Ministry, at present deals with the maintenance of internal security, upholding and advancing the Rule of Law, assistance to the States in the maintenance of public order, establishment and management of all India Services and Central Services - the policies relating to recruitment, conditions of service and the Conduct Rules of the services of the Union and of persons appointed to the Public Services and posts in connection with the affairs of the Union, the integrity and welfare of, and the joint consultative machinery for the public services, the administration of Union territories subject to the provisions of Article 239 of the Constitution and of any law made by Parliament in reference to the said Article and administrative reform.¹¹

Collection of intelligence regarding subversive activities, management of Central Police Forces, provision of facilities for and consideration and improvement of police work, civil defence, appointment to the High Courts and to the Supreme Court, determination and grant of citizenship, the census of India, which is one of the biggest operations anywhere, continuation of work in the manpower field, implementation of the policy formulated by Parliament regarding the official language of the Union including the Hindi Training Scheme for Central Government employees and management

10. Annual Report of the Ministry of Home Affairs 1966-67
(Government of India, New Delhi), p. iii.

11. Annual Report of the Ministry of Home Affairs 1967-68
(Government of India, New Delhi), p. i.

studies and advice on administrative matters, constitute the operational tasks of the Ministry.¹²

The Union territories are administered by the Central Government. The Ministry of Home Affairs is in overall charge of these territories and has a special responsibility for coordinating the various developmental plans of these territories. Similarly in the field of public services, the Central Government is responsible for the recruitment of the All India Services and the Central Services. The Ministry of Home Affairs regulates certain matters of general applicability such as uniform standard of recruitment, discipline and conditions of services. But with regard to the All India Services and Central Secretariat Services, the Home Ministry is not only concerned with the general control but also the detailed management. Regarding centre-state relations, the constitution itself has laid down provisions governing it. The Ministry extends towards maintaining proper coordination between the Centre and States and between and among States.

Under Article 355 of the Constitution, the Government of India (i.e. the Ministry of Home Affairs) assists the States in the maintenance of law and order during external aggression or internal breakdown of law and order machinery. As in other matters, in the social and political life of the country there is an underlying unity which makes it inevitable that anything that excites public passion and seriously disturbs the people or a section of them in any part of the country, sooner or later affects other parts. The Central Government, therefore, keeps in close touch with State

12. Ibid.

Governments and their agencies, and provide assistance to them to the maximum extent possible.¹³ All these functions are performed by the various branches, attached and subordinate offices of the Ministry.

I. Union Public Service Commission

Civil servants constitute the backbone of administration. Efficient administration demands efficient and impartial civil servants. Realising this, and, to avoid political interference and patronage it is rightly recognised by all democratic countries that the task of selecting the civil service should be assigned to an independent body. The credit of establishing such a body goes to UK, which paved the way for other countries, by establishing a Civil Service Commission in 1855; the United States also established a Civil Service Commission under the Pendleton Act of 1883. Similar Commissions were also set up in the British dominions. In India, the Public Service Commission was established in 1928.

The history of Public Service Commission in India can be traced back to the Reforms Act of 1919. The Act of 1919 contemplated a single public service commission for India, this was, of course, in consonance with the centralised control prevailed in India at that time. The plea for the constitution of a Public Service Commission was strongly put forward by the Royal Commission on the superior civil service in India in 1923. It assigned the Commission two broad functions. First, the maintenance of proper standards of qualifications and effective recruitment of personnel for the

13. Ibid., p. 11.

public services and semi-judicial functions with regard to discipline and control of the services. The Commission, however, did not make any provision for the setting up of similar commissions in the provinces.

Despite the provisions of the Act of 1919 and the recommendations of the Lee Commission,¹⁴ it was not until 1926 that the first Public Service Commission was set up in India. The Commission in 1926 consisted of five members appointed by the Secretary of State-in-Council and it dealt mainly with two subjects as recommended by the Lee Commission with considerable limitations. For instance, the Commission did not have the power to determine the method of recruitment, and moreover, it had no control over the organisation of examinations. The Commission made recruitments to public services both by competitive examination as well as by direct examination. It had also certain advisory functions with regard to discipline, promotion, demotion etc.

The Government of India Act, 1935, defined clearly the jurisdiction of the Federal Public Service Commission and made the Governor-General the appointing authority of the members of the Commission. From 1937 onwards the Commission was made responsible for the recruitment of all the federal public services, ICS, IPS, Indian Agricultural Service etc. Under 266(3) of the Act, the Governor-General could at his discretion, exclude certain matters in regard to the federation from the purview of the Commission.

During the Second World War, recruitment to the All-India and Central Services remained suspended. In 1945 when recruitment

14. The Royal Commission on the Superior Civil Service is also known as the Lee Commission.

was resumed, the work load of the Commission increased considerably; as a result membership of the Commission increased and this process continued till 1947, at which time the Commission consisted of 9 members, including the Chairman.

With the attainment of independence in August 1947 and consequently with the inauguration of the new Constitution of the Indian Republic in 1950, the Federal Public Service Commission became the Union Public Service Commission. The Chairman and the members of the Commission came to be appointed by the President for a period of six years or till they attained the age of 65 years, whichever is earlier, unless otherwise removed by the President after referring the case to the Supreme Court. The Chairman of the Commission is ineligible, on his retirement, for any governmental post of both the Centre as well as the States. The Members of the Commission are eligible only for chairmanship of the UPSC or chairmanship of any of the State Public Service Commission.

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The UPSC conducts examinations¹⁵ for appointment to the All-India Services and other allied services and Central Services Class I and II. It advises the Union Government on various problems pertaining to these services. The President of India is entitled to seek advice from the Commission on any matter which he thinks it fit. He is also authorised to exclude any matter or service or services from the purview of the Commission. But this power has to be exercised with the approval of the Parliament. All such matters have to be laid for not less than fourteen days before each House of Parliament and as soon as possible after they are

15. See Constitution of India (1950), Article 320.

made, and are subject to such modifications, whether by way of repeal or amendment as both Houses of Parliament may make during the session in which they are so laid.¹⁶

The Ministry of Home Affairs in the field of public services is responsible for regulating all matters of general applicability excluding those matters having financial bearing, which falls within the jurisdiction of the Ministry of Finance. Maintenance of common standards of recruitment, training, discipline and other matters connected with public services are the responsibility of the Ministry of Home Affairs and it maintains a constant control and supervision over the UPSC.

II. The Central Vigilance Commission

The Central Vigilance Commission has in the sphere of vigilance, a status and a role broadly corresponding to those of the Union Public Service Commission. It has extensive functions designed to ensure that complaints of corruption or lack of integrity on the part of public servants are given prompt and effective attention, and that the offenders are brought to book without fear or favour. The Chief Technical Examiners Organisation which offers technical advice on engineering matters and the Commissioners for Departmental Enquiries on Disciplinary Cases, function as part of the Commission. The Investigating Agency for the Commission is provided by Central Bureau of Investigation. The Commission is assisted in its efforts by the Chief Vigilance Officers and the Vigilance Officers in Ministries/Departments. The Commission submits an annual report to the Ministry of Home Affairs. A copy of the report together with a

16. Ibid.

memorandum explaining the reasons for non-acceptance of any recommendation of the Commission is required to be laid down by the Ministry of Home Affairs before each House of Parliament.¹⁷

The Commission exercises a general check and supervision over vigilance and anti-corruption work in the Ministries/Departments and public undertakings, etc. and for that purpose receives from administrative authorities progress reports and statistical returns about vigilance cases in forms prescribed for the purpose. When it appears that any procedure or practice affords scope or facility for corruption or misconduct, the Commission may advise that such procedure or practice should be appropriately changed. The Commission may also initiate a review of procedures and practices of administration in so far as they relate, to maintenance of integrity in administration.¹⁸

The Central Vigilance Commission consists of three wings, viz.,

- (1) Main office consisting of four sections, namely, Vigilance Section, Complaints Section, Coordination Section, Administration and Cash Section;
- (2) Chief Technical Examiners' Organisation; and
- (3) Commissioners for Departmental Enquiries.

The Central Vigilance Commission is assisted by a Secretary to the Commission, who is in overall administrative charge of the office of the Commission.¹⁹

17. Ministry of Home Affairs, Handbook of General Information (Government of India, September 1967), p. 24.

18. Second Annual Report of the Central Vigilance Commission, April 1965 to March 1966 (Government of India Press, Nasik, 1966), pp. 1-2.

19. Ibid., p. 2.

III. Border Security Force

Before 1965, the responsibility for vigilance and policing the India-Pakistan border rested with the State Governments of the border areas. As a result of the Chinese aggression and later Pakistani aggression, the need for a unified command for the border areas was felt by the Ministry of Home Affairs and accordingly the Border Security Force was set up on December 1, 1965, under the Director General of the Border Security Force. At present this Force is being governed by the Central Reserve Police Act, 1955, but it is hoped shortly to bring it under a separate statute meant exclusively for the Border Security Force, defining its organisation, duties and responsibilities. The Bill is to be introduced shortly in Parliament.²⁰ The establishment of a Unified Border Security Force has improved the morale of the border inhabitants and inspired in them a sense of security of life, liberty and property, against the frequent onslaughts from the other side of the border. It keeps a close watch on infiltration and prevents smuggling of goods etc. inside the country.

For the purpose of standardising the training and ensuring overall improvement in efficiency, a Central Institute known as BSF Academy has been established at Gwalior. A second training centre is established at Hazaribagh. Ancillary specialised Training Centres at Indore and Jodhpur have been taken over from the State Governments and strengthened. These centres will train, among others, directly recruited officers of the rank of Deputy Superintendent of Police and Platoon Commanders. Instructor-training has also been arranged in the Academy.²¹

20. Annual Report of the Ministry of Home Affairs 1967-68, p. 31.

21. Ibid.

A few India Reserve battalions discharging border duties were amalgamated with the Border Security Force during 1967-68. After the merger the Border Security Force was reorganised, which added to its strength, equipment and efficiency.

The Border Security Force besides keeping vigilance over the India-Pakistan border, also assists the State Governments in maintaining law and order at their request to that effect. A Coordination Committee was set up in every border State under the charge of a State Chief Secretary to maintain close liaison with the State Governments, the Army and the State Police. The Border Security Force renders advice to the Government on problems relating to border area and recommend measures for maintaining tranquillity on the border. Talks have also been initiated and are being initiated at the border official level with the Pakistan border officials which brought about a decrease in the trans-border crimes and has helped in improving mutual relations. A number of questions relating to the borders were disposed of at several meetings between India and Pakistan border officials. However minor incidents, which had been reported frequently in the newspapers, could not be avoided. A little effort on the part of the Border Security Force and proper vigilance on the part of the Ministry of Home Affairs will go a long way in the improvement of the border position.

IV. The Assam Rifles

The Assam Rifles is an old force with an impressive record. It was raised in 1835 as "Cachar Levy" and was originally meant for maintenance of law and order in the Lushai Hills.²² With the passage

22. Ibid., p. 33.

of time, its activities became manifold. In 1917 the Cachar Levy became the Assam Rifles.

The Force was constituted under the Assam Rifles Act, 1941. In August 1965, it came under the administrative control of the Ministry of Home Affairs from the Ministry of External Affairs. The Assam Rifles Act, 1941, vested its supervision and control in the Governor of Assam and Nagaland, with the following functions;

Security of international border; maintenance of law and order in the tribal areas of Assam and in Nagaland; and internal security of the other areas of Assam in an emergency in which the police needs its help. 23

The Force is employed in the border areas of NEFA as a security measure and for internal security in Nagaland, Assam and Manipur.

V. The Central Reserve Police

A special Police force with the designation of Crown's Representative Police was first raised in 1939, to assist the administration in the maintenance of peace, order and internal security. After independence Crown's Representative Police became the Central Reserve Police.

Before 1965 the Central Reserve Police did the work of policing and patrolling border crimes from Nagaland to Ladakh. With the formation of Border Security Force in 1965, its work had reduced considerably and some of its battalions were transferred to the Border Security Force. Its functions were confined to providing help and assistance to the State Governments at their request for the maintenance of law and order. The Central Reserve Police had

23. Ibid.

been placed at their disposal with a view to assist the State police, whenever such a demand was made by the State Governments.

Owing to Chinese aggression, a few Indian Reserve battalions were raised at the cost of the Government of India in 1962. In the absence of uniformity in training, meagre pay and undue delay in the movement of these forces from the Centre to the States and other such problems the Central Reserve Police failed to project an image and consequently there was a proposal of the Ministry for the integration of these forces. In view of the proposed reorganisation, new centres are proposed to be established for the deployment of these forces in different parts of the country, so as to make the forces available to the State Governments at short notices. But pathetically enough so far these proposals of the Ministry have not seen the light of the dawn and are still under the consideration of the Ministry.

VI. Directorate of Coordination (Police Wireless)

For some years past, an Office known as Wireless Inspectorate had been functioning under this Ministry for the co-ordination of the Police Wireless system and for advising the States on technical matters in connection with their police wireless communications. With effect from April 1, 1950, this Office has been redesignated as the Directorate of Coordination, Police Wireless and assigned the status of a subordinate Office.²⁴

In view of the importance of maintaining an effective system of communications for the police forces, the State Governments have set up their own police wireless systems. For effective communications between the headquarters of the Central Government and the

24. Annual Report of the Ministry of Home Affairs 1950-51, p. 31.

various State Governments, the Standing Finance Committee in 1949 approved the proposal of the Ministry of Home Affairs to organise a self-contained inter-state Police Wireless system, with central control stationed at Delhi, to be manned by the staff recruited by the Ministry of Home Affairs. Consequently the Directorate of Police Wireless Coordination Organisation was established.

The function of the Directorate of Coordination (Police Wireless) is to assist the State Police Wireless Organisations in procuring equipment, training of technical personnel etc. According to the Home Ministry Report (1967-68), the third instalment of the Foreign Exchange of 15.75 lakhs has been released during 1967-68 to be placed at the disposal of Bharat Electronics for the manufacture of 525HM-30 sets to meet the urgent requirements of the Police.

There has been a perpetual overlapping of functions between the Police Wireless Coordination Organisation and the Directorate in the Border Security Force. In order to avoid duplication, a proposal is under consideration to integrate the two communication units of the Directorate Police Wireless System and the Border Security Force. The first step in this direction being that the two organisations were put under the direction of one officer, who acts in dual capacity. In matters of DCPW he functions under the Home Ministry and in regard to the border security matters he works under the general supervision of the Director-General, Border Security Force. While the Directorate will continue to look after general procurement of equipment and training and will give special attention to research and development, telecommunication equipment for the police, the Central Workshop at Delhi to be set up for the manufacture and maintenance of sets of both the DCPW and the BSF, as also any other

regional or field workshops that are set up in areas where the BSF is operating, will be looked after by the BSF.

VII. Intelligence Bureau

The Bureau was set up to provide to the Government, intelligence on matters relating to the security of state and to render advice on security measures. The Bureau is headed by a Director, who is assisted by Regional Directors at the headquarters of various State Governments. It is for the Director to decide (i) the form in which information is to be supplied, (ii) to assess its reliability, and (iii) to prescribe the grade of secrecy with which it must be treated. It is also his duty to protect the secrecy of his sources and channels of information to whatever extent he considers²⁵ necessary.

The Bureau publishes a quarterly containing articles on crime, crime detection, matters relating to police - their institutions etc. Under the direction of the Central Intelligence Bureau, the Central Finger Print Bureau and Central Forensic Laboratory have been established at Calcutta.

VIII. Central Bureau of Investigation

The CBI was set up on April 1, 1963 for the investigation of crimes in general and investigation of cases under the Defence of India Act. It also investigates the cases of black-marketing, hoarding, profiteering, adulteration etc. It keeps a close liaison with the National Central Bureau connected with the International

25. Secretariat Training School, Organisational Set up and Functions of the Ministries/Departments of the Government of India
(Ministry of Home Affairs, Government of India, New Delhi), p.152.

Criminal Police Organisation. Besides, it performs the following functions;

Maintenance of crime statistics and dissemination of information relating to crime and criminals;

Study of specialised crime of particular interest to the Government of India or crimes having all India or inter-state ramifications or of particular importance from social point of view;

Conduct of police research;

Co-ordination of laws relating to crime.²⁶

The Bureau also renders assistance to the State Police Forces in cases of investigation of inter-state crimes and such other crimes affecting two or more states.

The Bureau consists of the Special Police Establishment Division (with three wings - General Offences Wing, Economic Offences Wing and Food Offences Wing), the Legal and General Division deals with work relating to crime having international ramifications; the crime records and statistics Division, maintains a uniform record of various crimes committed in States and Union territories and on the basis of it prepares a manual and circulates to states and Union territories for adoption; Research Division; Technical Division etc. Moreover a Counterfeit Currency Section was set up for gathering statistics of counterfeit currency and for indexing counterfeit Rs. 100 denomination notes according to their series and group classification by the Security Press.²⁷

The Bureau works under the Administrative Vigilance Division of the Ministry of Home Affairs.

26. Ibid.

27. Annual Report of the Ministry of Home Affairs 1967-68.

IX. The Detective Training Schools

The Central Detective Training School provides intense training to officers of the rank of Inspector/Sub-inspector in the field of crime detection. Before 1964, there was only one Detective Training School, which trained some 700 officers till the end of the year 1966. With the rapid increase in the requirements of State Governments of such officers, one more institution was set up at Hyderabad in 1964. This school covers effectively the southern parts of India and supplies to them trained officers of the rank of Inspector/Sub-inspector in the field of crime detection.

X. The National Fire Service College and The Emergency Relief Training Institute

The frequent breakdown of fire in different parts of the country causing damage to the lives and properties of citizens led the Ministry to establish the National Fire Service College and the Emergency Relief Institute, with a view to impart training in fire-fighting. The main reasons why such losses could not be forestalled in the past were due to scarcity of properly trained fire-fighting personnel in the country and the hopelessly insufficient fire-fighting equipment. To prevent the devastation, a Fire Service College was established to provide systematic training in the art of fire prevention to the staff of the various Fire Brigade Organisations located all over the country. As a result, two committees were set up in the Home Ministry, Design and Development Committee and Standing Fire Advisory Committee to study the problems relating to, and recommend measures for standardising fire equipment and appliances and to facilitate their easy procurement and manufacture within the country.

Similarly it has been decided to set up an Emergency Relief Organisation on an All India basis to provide assistance to the victims of natural calamities, floods, epidemics, fire etc. Some States followed the Centre and set up similar organisations and other States are still in their prevaricative moods.

A Central Emergency Relief Training Institute was established at Nagpur in April 1957, for imparting specialised training in emergency relief operations and to train such officers of the Central and State Governments as will be called upon to plan and organise emergency relief operations and to turn out fully trained instructors for the regional Schools to be set up by the State Governments.²⁸

Besides providing training to the nominees of the Government, the Institute also provides training to non-official associations and provides lodging and boarding free of cost. 75 officers are trained every year at the Institute. Besides about 500 NCC officers are also imparted instructions in emergency relief work by the Institute Staff every year.²⁹

XII. Central Finger Print Bureau

The function of the Central Finger Print Bureau is to maintain a record of the finger print slips of all persons convicted of offences under the Dangerous Drugs Act (Act II of 1930) and the Foreign Exchange Regulation Act VII of 1947 and Sections 109 and 110 of Cr.P.C. etc. The Modus Operandi Section of the Bureau for international criminals likely to operate in India in connection with

28. Secretariat Training School, Organisational Set up and Functions of Ministries/Departments of the Government of India, p. 155.

29. Ibid.

smuggling of gold, narcotics etc. expanded further.³⁰

XIII. Government Examiner of Questioned Documents, Calcutta and Simla

These offices undertake scientific examination of questioned documents involving comparison of hand-writing, detection of forgery, examination of type writings, seals, papers, inks and other items of allied nature, referred to them by departments of Government of India and by the States.³¹

XIV. The Directorate of Manpower

The Cabinet constituted the Directorate of Manpower in the Home Ministry in September 1956. It acts as the Secretariat for the Cabinet Committee on Manpower. It is concerned with all matters associated with manpower policies and programmes, whose implementation is done by the Ministries and other agencies concerned in the light of the decisions of the Cabinet Committee. It keeps a close liaison with the Division of the Planning Commission dealing with Manpower; the Council of Scientific and Industrial Research and with various Ministries through their nominees. Besides, there is a Manpower Officer in every state, who looks after the Manpower affairs in his state and keeps informed of the achievements and the pitfalls to the Directorate.

Matters concerning manpower are discussed, time and again, in informal steering groups on Manpower, whose members include; representatives of the, Planning Commission, Ministry of Home

30. Annual Report of the Ministry of Home Affairs 1967-68, p. 36.

31. Ibid.

Affairs, Ministries of Labour, Scientific Research and Cultural Affairs and Commerce and Industry. Representatives of other Ministries are also invited whenever matters concerning them arise. One such meeting was held in April 1966 in two sessions, which stressed the need to:

- "(a) improve the coverage of data on employment and manpower utilisation;
- (b) improve the arrangements for collecting information about employment generated in Public Sector;
- (c) define, examine and identify various training of educational programmes needed for an adequate supply of managerial personnel;
- (d) review measures taken to meet the requirements of teachers in engineering colleges and polytechnics;
- (e) facilitate corroboration between educational institutions and industry;
- (f) attempt on Annual Manpower Review; and
- (g) implement measures to improve the doctor-population ratio in general and medical facilities in rural areas in particular." 32

The work in the Directorate of Manpower is in progress. A scheme for linking occupations with educational qualifications is being worked out for use in future occupational census. Work is also being done on determining the manner in which information relating to occupation, education, investment and technology may be investigated at the level of the firm and for each industry as to yield ratios which may be used in manpower forecasting. 33

The Manpower Directorate is in charge of a Joint Secretary who is assisted by a Deputy Secretary and two research units, one of

32. Annual Report of the Ministry of Home Affairs 1966-67, p. 96.

33. Ibid., p. 93.

which is located in the Planning Commission under the charge of a senior Research Officer.

XV. Central Forensic Science Laboratory,
Calcutta, Hyderabad and Delhi

The Forensic Science Laboratory was established to assist in the application of Forensic Science in the detection of crimes. At present there is only one Forensic Science Laboratory functioning in Calcutta. The Laboratories at Hyderabad and Delhi have not been established so far due to non-availability of suitable accommodation. The posts of the Directors of these Laboratories have already been filled and it is hoped to establish the said laboratories shortly. Posts are first filled and laboratories are established afterwards. It is really a staggering commentary on the admirable promptness of the Ministry of Home Affairs.

XVI. National Academy of Administration

The problem of training of civil servants has assumed special significance in India owing to expanding machinery of the Government, making it imperative to create new services to man the gigantic tasks, befallen upon the Government after independence. As the Planning Commission has very correctly observed;

Next to recruitment, the training of personnel has considerable bearing on administrative efficiency. Each type of work in the government requires a programme of training suited to it. In general in all branches of administration it is necessary to provide for the training of personnel at the appropriate intervals in later years. In this connection, we would emphasise the importance of careful grounding in revenue and development administration for recruits to the Indian Administrative Service and the State Administrative Services. 34

34. Planning Commission, Administration and Public Corporation
(Manager of Publications, Delhi, 1964), p. 121.

Training in India "with a tradition of thousands years of authoritative paternal administration, the transition to parliamentary democracy has involved a revolutionary change in the physiology of the body politic. It calls for a radical adjustment of attitude on the part of its operative organs, viz., the higher administrative

personnel".³⁵ The training which was imparted to the Indian Civil Service was found to be out of tune and it was radically reoriented.

In the words of Asok Chanda

the best training in any service is provided by the actual doing of the jobs for which the service exists. Much time and wastage can, however, be saved by providing a certain amount of basic training to shorten and facilitate the process of learning and doing. Such basic training has to be both "general" applicable to all higher public services and "special" relevant to the needs of particular services. The "general" part should comprise the basic knowledge which all higher public servants should possess, namely, the main principles of the Constitution, the role of public servants in a Parliamentary Democracy, the organisation of machinery of Government at the Centre and the States, the principles of Public Administration and personnel management and the techniques of public relations. It should also include a knowledge of Economics in general and Indian Economics in particular, and an application of India's social and economic problems.³⁶

He further suggested that "The "special" part of the basic training would cover studying the Acts and rules relating to the particular service, departmental procedures, etc. The course of training in the IAS Training School covers both the general and the special parts of basic training needed by the officers of the service. Arrangements for training officers of the Indian Audit and

35. S.B. Bapat, "The Training of the Administrative Service", Indian Journal of Public Administration (Indian Institute of Public Administration, New Delhi), Vol. I, No. 2, April-June 1955, p. 123.

36. Asok Chanda, op. cit., p. 124.

Accounts Departments, Income Tax Department, Railways etc. have been made by the Ministries concerned, but these are confined largely to the "special" part of the training. It would be of great advantage if, each year, the recruits of the higher services were brought together in some Central Government Department for about six months to receive the "general" part of the training. This will enable the officers coming from different parts of India to benefit by close contact with each other and lead to the elimination of service consciousness. It may help in re-allotting the new officers, who, by temperamental or other reasons, prove unsuitable for the service to which they were originally assigned.³⁷"

The Ministry of Home Affairs agreed with the above suggestion and in 1956 it addressed the State Governments suggesting a scheme for providing Refreshers Courses to the All India and Central Services. A beginning was made by introducing Refresher Courses in 1957 at the IAS Staff College, Simla, for the IAS Officers with a standing of not less than 6 years. In 1958 the Home Ministry decided to set up the National Academy of Administration, so that the services, wherever they may function, whether as Administrative Officers, or as Accountants or as Revenue Officers, might imbibe true spirit and discharge their duties in a manner which will raise their efficiency and establish concord between them and the public completely.³⁸ Almost all the Central Ministries agreed with the proposal of the Home Ministry and they gave their consent towards establishing the said institution. Ultimately from July 1959 a

37. Ibid.

38. Lok Sabha Debates, Vol. XV, No. 46, April 15, 1958.

combined course at the IAS Training College, Delhi, was commenced for the IAS, IFS, Indian Audit and Accounts Service, Indian Defence Accounts Service, Indian Postal Service, and Indian Customs and Excise Service. After the commencement of the foundational course at the IAS Training School at Delhi, the Ministry of Home Affairs decided to merge the IAS Staff College at Simla with that of the IAS Training College at Delhi to start the National Academy of Administration at Mussoorie. The Academy was established on September 1, 1959. It provides training to the All India and Central Services, of which more later.

XVII. Secretariat Training School

The above institution was set up in May 1948 for conducting courses for direct recruits to the grades of Assistants, Assistant Superintendents and Section Officers of the Central Secretariat Services. It also trains officers belonging to these grades of Railway Board Secretariat and the Indian Forest Service. Besides, the Institution conducts refresher courses to the employees of Central Secretariat Service. The School also imparts training in English and Hindi shorthand, typewriting and holds examinations in typewriting and shorthand on behalf of the Government of India.

XVIII. Bureau of Correctional Services

The Bureau was set up in August 1961 in the Ministry of Home Affairs as a subordinate office to act as a coordinator of policies of the various States on matters relating to crime, jails and to make a study of the measures adopted in foreign countries, offering valuable suggestions and to develop a uniform policy with regard to these matters.

The Bureau also exchanges information between India and the United Nations; promotes research amenities, undertakes surveys and experimentation and finally through bulletins and other publications supplies information on the subject.

XIX. Administrative Reforms Department

The Committee on Administration appointed by the Government of India (1962-63) recommended for the setting up of a small department in the Ministry of Home Affairs to suggest from time to time measures to improve the efficiency of Administration. Accordingly the Department of Administrative Reforms was set up in March 1964, incorporating within itself that erstwhile O & M Division of the Cabinet Secretariat.³⁹ Though it is a part of the Ministry of Home Affairs, its complex functions led to an organisational pattern of its own. It maintains close liaison with all the Ministries of the Government of India and keeps in touch with administrative moves both at the Centre and State levels. It publishes a fortnightly journal Glimpses in Administration, which contains articles on distinctive aspects of administration and its improvements. In order to meet the shortage of persons trained in the techniques of administrative analysis, the Department organises two courses, an Appropriation Course for middle Executive level officers (Deputy Secretary or Under Secretary or their equivalent) in collaboration with the Indian Institute of Public Administration and an intensive Work Study Course for Lower Executive levels (officers of the rank of Section Officers or equivalent) at the Secretariat Training School.

39. Ministry of Home Affairs, Handbook of General Information, p. 21.

Both sets of Courses include practical project work as an integral part of the syllabus.⁴⁰ The Department is headed by a Joint Secretary, who is assisted by four Deputy Secretaries and five Under Secretaries. An analysis of its working has been given in the following chapter.

XX. Administrative Reforms Commission

The Administrative Reforms Commission was set up in January 1966 with reference to the Resolution of the Home Minister, C.No. 40/3/65-AR(P), with six members headed by Morarji Desai. Five of the members including the Chairman were Members of Parliament and one a civil servant. The Commission was set up with a view to 'examine the public administration of the country and make recommendations for reform and reorganisation where necessary'.⁴¹ As a result of the onerous responsibilities, the Commission in its turn set up twenty Study Teams and thirteen working groups, to examine different sectors of administration. The Commission afterwards submitted 20 reports to the Government of India on various problems of administration.⁴²

40. Ibid., p. 22.

41. Resolution of the Ministry of Home Affairs (Government of India, New Delhi), January 5, 1966, No. 40/3/65-AR(P).

42. (A) Problem of Redress of Citizens' grievances.
 (B) (1) Machinery for Planning (Interim Report)
 (2) Machinery for Planning (Final Report).
 (C) Public Sector Undertakings.
 (D) Finance, Accounts and Audit.
 (E) Economic Administration.
 (F) The Machinery of the Government of India and its procedures of work.
 (G) Life Insurance Administration.
 (H) Central Direct Tax Administration.
 (I) Administration of Union Territories.
 (J) Personnel Administration.
 (K) Delegation of Financial and Administrative Powers.
 (L) Centre-State Relationships.
 (M) State Administration including District Administration.
 (N) Small Scale Sector.
 (O) Railways (P) Treasuries.
 (Q) Defence Matters.
 (R) Relations between the Press and the Administration.
 (S) Administrative Tribunals.
 (T) Scientific Departments, etc. etc.

With the submission of these reports, it has completed its task in respect of nine out of the ten especially mentioned areas of administration in its terms of reference and the ARC was closed on June 30, 1970. Some of the recommendations of the Commission have been accepted by the Government and the statements containing the decisions of the Government on them were placed in Parliament from time to time. The Lokpal and the Lokayuktas Bill, the outcome of the Commission's report, on problems of redress of citizens' grievances was passed by the Lok Sabha in August 1969. The Bill is at present before the Rajya Sabha.⁴³ The Bill aims at establishing the institution of Lokpal to investigate into allegations against Ministers and Secretaries at the Centre and also provides for appointment of Lokayuktas to look into similar complaints against other public servants.⁴⁴

The Commission's report on planning has influenced the reorganisation of the Planning Commission and has led to changes in its methods of plan formulation. The concept of loans and grants to the States suggested by the Commission was incorporated in the Draft Fourth Five Year Plan, after having been broadly endorsed by the National Development Council.⁴⁵

As a result of the recommendations made in the report on public sector undertakings, an audit board was created. The Bureau of Public Enterprises, which is responsible for the follow-up of

43. Till the end of 1970, the Bill was not passed by the Rajya Sabha.

44. See Annual Report of the Ministry of Home Affairs 1969-70, p. 53.

45. Ibid.

decisions taken by the Government on this report, issued instructions on a number of matters such as design organisations, project completion reports etc. For ensuring systematic action, an implementation cell was established in the Bureau. Similarly a number of decisions taken on the report on Economic administration have been implemented in areas such as import control, export promotion, foreign collaboration, the management of foreign exchange and the control of capital issues. An important outcome of this report is the recent decision to constitute a Bureau of Industrial Costs and Prices in the Department of Industrial Development. The Bureau will tender advice to the Government on cost reduction and improvement of industrial efficiency and also Pricing problems in relation to industrial costs.⁴⁶ Despite the fact that the ARC has done a commendable work in the field of administrative reforms, the fact remains that much of its utility will depend on the manner in which the Government treats the recommendations of the ARC. The very purpose of constituting such a high-power Commission is bound to be defeated if its recommendations go unheard by the Government.

46. Ibid., pp. 53-54.

CHAPTER II

A CRITICAL ANALYSIS OF THE WORKING OF THE MAJOR DIVISIONS OF THE MINISTRY OF HOME AFFAIRS

The Ministry of Home Affairs in the Government of India broadly deals with the maintenance of internal security, matters pertaining to public services, administration of Union territories, Centre-state relations etc. For the effective performance of these functions, the work of the Ministry is divided among its various Divisions and Sections. The head of the Division or Section, as the case may be, is responsible to the Home Secretary for the effective performance of the tasks assigned to him. In view of the heavy responsibilities cast upon the Home Ministry, its divisions and sections are also considerably large. There are, at present (1967) twenty-seven Divisions and eighty-three Sections in the Ministry. It is not possible here to analyse the functions of each and every division, partly due to non-accessibility to the required material and partly owing to lack of space, for purposes of this thesis. Suffice here to analyse few major divisions of the Ministry. The moot point in this connection is to highlight the factors clouding efficiency of administration and the procedural defects. This is common to all developing polities, India being no exception. In such countries, therefore, a proper assessment of the various governmental departments should be attempted with a view to eradicating inefficiency from administration in general. The review is purely academic. An attempt has been made to give an objective analysis on the basis of available material and solid facts.

I. Organisation and Methods Division

The problem of administration is the problem of reducing costs, improving the services, and achieving objectives with the least possible delay. Frequent review and evaluation tends to add to administrative efficiency by pinpointing deficiencies. Undoubtedly, efficiency depends upon a sound structure, clear-cut procedures and methods, and active personnel with requisite calibre. Administrative inefficiency, according to Frederick W. Taylor, is the "cause of waste and the conflict between the employer and the employee and is the result of lack of development of science to replace the old rule of trial and error ... scientific selection and then bringing of the scientifically selected work men and science together, equal division of work between management and the men."¹

Tradition, however, dies hard. Many of the administrative procedures, become out of tune with the prevailing situation, still the administrators do not want to abandon them due to the habit of pursuing the routine (the beaten path) as well as unwillingness on their part to learn the modern techniques of administration for which there is no apparent reason except lethargy and indifference. As Marx has put it;

Perhaps the strongest simple impediment of management progress is the deadweight of tradition - the habit of doing things, the way, they have always been done. Habits are powerful and habitual method may survive because we are used to it, not because it is the best method. The only best way an organisation can rid themselves of controlled procedures, unnecessary operations and wasteful duplication of efforts is to subject every authority periodically to searching and re-examination. 2

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1. H.E. Merul (ed.), Classes in Management (American Management Association, New York, 1960), p. 9.
 2. F.M. Marx (ed.), Elements of Public Administration, p. 28.

The necessity of creating a permanent organisation for a thorough check-up and recommend measures for the improvement of administrative machinery was recognised by many eminent men in the field of Public administration. Gopalaswamy Ayyangar in his report on the Reorganisation of the Machinery of the Government of India, stressed the need for a permanent body to suggest from time to time measures in consonance with the changes in organisation and methods of administration. In the same way the Economy Committee in 1949 and the Planning Commission in the First Five Year Plan (1952) stressed the urgency towards establishing such an organisation. The Government of India accordingly proposed to set up an Organisation and Methods Division.

Paradoxically enough, very soon after the said proposal, hectic tension continued between the Ministry of Finance and the Home Ministry, both claiming that the O and M Unit be set up in their Ministries. As a result, the establishment of the O and M Division was considerably delayed. In the words of Bapat,

The general policy regarding recruitment of personnel and determination of their conditions of service (other than those having a financial aspect) was in the sphere of the Ministry of Home Affairs; so also was the responsibility of laying down the procedure for conducting the business of Government. On the other hand, the Finance Ministry had a predominant voice in determining strength of staff and expenditure to be incurred. Though all agreed that some Central agency charged with the responsibility for ensuring the efficiency of the Government machinery be set up, there was no agreement as to where it should be located. 3

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3. S.B. Bapat, "O and M in the Government of India", Indian Journal of Public Administration (Indian Institute of Public Administration, New Delhi), Vol. 1, No. 1, January-March 1955, p. 64.

The Ministry of Home Affairs put in a strong claim for the O & M Division on the ground that efficiency was largely a question of the number and quality of men and the way they did their work. The Finance Ministry contended that efficiency was not merely a question of how much was done how quickly but also what it would cost to the tax-payer.⁴ So the location and establishment was held up for a long time. After prolonged discussions between the Finance and the Home Ministry, ultimately the O & M Division was decided to be set up in the Central Cabinet Secretariat, from where it is easier to secure co-operation from all Ministries and Departments. In 1954, the Division was transferred to the Department of Administrative Reforms.

After having solved the self-imposed ticklish problem of location, the Division was entrusted to a Director who is a part-time officer of the status of a Joint Secretary. The Director is to be assisted by a Deputy and an Assistant Director. Besides O & M officers were appointed in all the Ministries and Departments. The Director pays frequent visits to the Ministries and Departments to watch their procedures of work. He can advise the O & M Officers of the Ministries and can suggest correctives. The O & M officers are in charge of the O & M Unit of their Ministry/Department. The work relating to the O & M is carried out through the various O & M units. Besides, in 1957 an Officer on Special Duty was appointed to investigate special problems involving procedural complexities and other techniques. He undertakes special studies of problems of a general nature which concern more than one Department. Frequent meetings between the O & M Director and the O & M Officers are held

4. Ibid.

to promote consultations and exchange of views.

The O & M Division in the Ministry of Home Affairs is concerned with the administration and House-keeping functions in relation to the establishment of the Ministry of Home Affairs proper. It is also concerned with the creation of various posts in the Ministry; operation of the Central Government Health Service Schemes, Office equipment etc. It is also concerned with the consolidation of various returns on the implementation of Cabinet decisions, cases disposed of by officers without reference to Ministers and observance of procedural instructions.⁵

The normal functions of the Division include examination of the structure of organisations, precedents and procedures of work. "Its duty is to provide better facts to Secretaries for decision making on organisational and administrative issues. Whenever the Secretaries feel the need for more adequate and objective facts they can call upon the O and M staff, internal and external, to make available trained personnel for analysis. ... It should be the endeavour of the O and M group to increase its ability and to provide the service that it may be called upon to perform."⁶

"The methods Part of the O and M work", observes R. K. Rangan, "pays more attention to the individual's performance, while the Organisation part of its work aim at knitting together the various individuals into an effective and cohesive group with reference to the objective to which the various persons have been brought

5. Ministry of Home Affairs, Handbook of General Information (Government of India, New Delhi), September 1967, p. 21.

6. Sixth Report of the O and M Division (Cabinet Secretariat, New Delhi), 1969-80.

together in that group.⁷"

The achievements of the O and M Division as far as the building up of administrative efficiency is concerned is not negligible. It is on its suggestion that the work in the Home Ministry had been completely reorganised to avoid duplication, buck-passing and side-tracking the issues. The various sections in the Ministry have now been kept under the general control of either a Deputy Secretary or an Under Secretary and not of both as it was the practice till then. That caused undue delay in the disposal of cases, as no file could move out of the section unless ratified by both Under Secretary as well as the Deputy Secretary. On the advice of the Division powers and jurisdiction of section officers were increased radically for early disposal of cases. "The main hurdle to inefficiency", observes the O and M Division, "lay in the existing failure on the part of all concerned to work the existing system as it was meant to be worked."⁸ To overcome this problem, in 1965 the O and M Division compiled a standard volume entitled the 'Manual of Office Procedure' which pointed out the factors retarding efficiency. They include non-observance of prescribed procedure and instructions, lack of periodical inspections and of effective control, delays in arrears in typing and dispatch of registers, delays in attached offices, non-observance of time schedule in matters like budget estimates etc.

During 1958-59 the O and M Unit undertook vigorous measures to achieve better husbanding of the Ministry's resources. The

7. From his lecture on 'O and M in the Government of India', May 3, 1960, Indian Institute of Public Administration, New Delhi.

8. First Annual Report of the O & M Division (Cabinet Secretariat, New Delhi), 1954-55, p. 2.

volume of business which had to be handled has increased by 25 per cent since 1957. A stringent watch was maintained over the arrears pending disposal at the end of every month, and these arrears have shown a steady decline from 34.5 per cent in 1957 to 16.3 per cent in 1960.⁹

The question of setting up or strengthening of the internal work study units was taken up with a number of Ministries/Departments. Specific proposals for giving effect to the government decisions to lift the sights of the O and M units so as to enable them to function effectively as internal consultancy organisations were formulated and discussed with the Ministries concerned. In order to ensure that the O and M units in the Ministries are manned by persons of uniformly high calibre and aptitude, the preparation of model rules for recruitment to the post of senior analysts was taken up. Besides, on a directive from the Cabinet Secretary, the Department undertook to assist a number of Ministries/Departments in designing a suitable system for collection of data, storage of information, maintenance of records, etc. appropriate to the needs of each Ministry. The Departments of Agriculture, Labour and Employment, and the Ministry of Foreign Trade were selected for this purpose. The study of one section of the Ministry of Foreign Trade had been completed, which could be used by the O and M Section of that Ministry as a model for carrying out studies in other sections of that Ministry. The main recommendations made in the report relate to:

- re-designing of the periodical returns for ensuring meaningful control and convenience of storage;
- designing of an information folder, which would give

9. Annual Report of the Ministry of Home Affairs 1960-61, p. 1.

at a glance, the latest developments, trends and special features; devising of simple methods for comparison of performance with the targets; and rationalisation of subjects for opening files to facilitate easy identification and retrieval of files. 10

The O & M Division has done commendable work in the direction of administrative reform but there were certain hidden pitfalls which the Division itself failed to avoid. The Division has fallen a victim to red-tape and procedural bottlenecks. It has stuck up in the quagmire of the 'proper channel' and has unwittingly become a prey of the sluggishness which it was intended to remedy. The Division had become more or less stagnated and is unable to cope with the emerging problems of developing economy and plan-oriented administration. The intricate problems that every Five Year Plan is likely to throw up is not being attended to properly due to the paucity of Research projects, faulty distribution of functions among various departments, a well-defined hierarchical arrangement and lack of proper co-ordination, both horizontal and vertical, within the Ministry and outside the Ministry with other collateral Departments. Unless these problems are attended to in right earnest and reforms are evolved with determination to implement them, no amount of work on the part of the O and M Division will improve the fast deteriorating administration as a whole. The services of Attached Offices like the Union Public Service Commission, Central Vigilance Division and the like can be conveniently and fruitfully sought to that effect.

10. Annual Report of the Department of Administrative Reforms
(Government of India, New Delhi), 1970-71, pp. 6-7.

"The shortage of persons trained in the techniques of administrative analysis is a major bottleneck", observes the Department of Administrative Reforms. "An O and M Officer must know what to look for, how to get about it, and then how to put forward the result of his study. This sounds simple enough, but only for exceptional minds"¹¹. Therefore, to impart expert knowledge, training programmes have been launched. A beginning was made by organising two courses, one for the Middle level officers, arranged in collaboration with the Indian Institute of Public Administration and the other for Lower Executive levels, section officers or equivalents in collaboration with the Secretariat Training School. And so far (till 1966) 73 Central and 44 State officers of the rank of Section Officers or equivalent were trained.¹² A recent feature has been the extension of these courses to officers from Public Sector Undertakings and also officers from the technical cadres of both Central and State Governments. Four officers of the Ceylon Government have also been trained under the Colombo Plan.¹³ However this is only a beginning and a change, a change for the better, but this slow process has to be tightened up to meet the various administrative challenges. Steps should be taken to increase the number of courses so that all Ministries and Departments of the Government could benefit from the trained staff. Similar arrangements should be made at the State levels. The State Departments are in no way

11. Annual Report of the Department of Administrative Reforms, 1965-66, p. 18.

12. Ibid.

13. Annual Report of the Department of Administrative Reforms 1966-67, p. 11.

better than the Central Departments. Added, the O and M Division should make a special study of Work Procedures obtaining in some sectors of administration which have lapsed into chronic inefficiency or which are amenable to easy exploitation by corrupt elements and prescribe remedies for preventing misuse or corrupt practices.¹⁴ The O and M Division should also take up the work of revising office manuals, Civil Service Regulations, Fundamental Rules, etc. A competent body of persons from the concerned administrative office aided by experienced officers from the Audit Department should be entrusted with this task.¹⁵

Despite these drawbacks the working of the O and M Division as such is commendable. Speaking about its achievements, R.K. Rangan, Deputy Director of the O and M Division observes;

A number of procedural reforms have been introduced at the instance of the O and M Division to correct defects brought to light by experience or as a result of inspections or special studies. They relate to such diverse matters as the handling of dak, receipt of papers addressed to officers ... maintenance of reminder duties, monthly progress, returns of the cases of quasi-permanent staff, direct correspondence between Ministries and heads of Departments of other Ministries, the prompt supply of Government reports, publications etc. to the public, the disposal of identity cards, the drawing of washing allowances for class IV servants etc. ¹⁶

But O and M cannot alone bring about revolutionary changes in administration. Its success depends on the way in which the officials

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14. Report of the Administrative Reforms Commission on Promotion Policies, Conduct Rules, Discipline and Morale (Government of India, New Delhi), 1967, Vol. I & II, para 20(5).
 15. Report of the Administrative Reforms Commission on Personnel Administration (Government of India, New Delhi), 1969, para 67(5).
 16. R.K. Rangan, 'O and M in the Government of India', Indian Journal of Public Administration, 1960, pp. 13-14.

implement its suggestions. Its success can be ensured if every official in administration is O and M minded. As far as the O and M officers are concerned they are still to learn the techniques of persuasion and argumentation rather than command and accusation, which is a legacy of colonial rule. Its approach should be fact finding rather than fault-finding, positive rather than negative, pragmatic rather than platitudinous. Its role should be constructive and helpful and not destructive and contemptuous.

II. The Welfare Division

The Welfare Division was constituted in the Ministry of Home Affairs to look after the welfare activities of the Central Government employees. Welfare of Government servants occupies a prominent place especially in India, which is committed towards establishing a welfare state. It is conducive to efficiency of Government servants, too. With a view to promote the welfare activities, the Ministry undertook several steps. In 1964, for instance, the Central Secretariat Sports Board was set up to initiate sports, athletics, cultural activities etc. The development of social and cultural activities was also actively undertaken. Liberal grants were placed at the disposal of recreation clubs, functioning in various Ministries and Departments as well as the residential colonies of the Government servants. Canteens and cafeterias were opened for supply of tea and snacks to Government employees at reasonable prices in the various Central Government offices at Delhi and other places. With a view to bring about co-ordination in the welfare activities High-Power Committees were set up at various places outside Delhi also.

The Division works under the direction of a Joint Secretary, assisted by the Chief Welfare Officer and an Under Secretary. The Secretary Sports Control Board looks after the functions of the Board. The Director of Canteens acts as technical adviser on problems relating to establishment and maintenance of canteens.

Despite all the above-mentioned welfare activities many more things still remain to be tackled. Take for instance, the Ministry of Home Affairs which is situated largely in the South Block of the Central Secretariat. Most of the portions of the building are insanitary. The rooms where staff below Section Officers work are not up to the mark. It looks more like an overcrowded dormitory which is dark and dingy. There are neither common rooms nor a decent library. The Library of the Ministry resembles a post office, unbecoming of a prestigious department. The atmosphere is not conducive to intellectual pursuits and undisturbed sustained studies. Such an atmosphere is hardly conducive to reading purposes. Perhaps, it is due to this atmosphere that reading habit is at the lowest ebb. Books are issued to the employees but they are seldom returned in time. To cite one instance, a Joint Secretary was in need of a book and accordingly he gave a ring to the Librarian. The Librarian informed a particular Under Secretary with whom the book was lying to return the book so that he could issue it to another of his colleague. This, of course, did not bear any fruit. The Librarian in the meanwhile sent two reminders, which went unheeded. Inevitably he reminded him once again. Surprisingly enough, the reply came at once from the concerned gentleman asking the Librarian not to send any more reminders. The poor Librarian acted accordingly. This is one example of the working of the Library of the Ministry.

substantial measures have to be taken to see that the Library works efficiently. Reading habit among Government servants constitutes a prime necessity. It broadens their rigid and narrow outlook. Only through studies they will come to know of the drastic and far-reaching changes that are taking place at a rapid pace in the field of administration in other countries. An efficient Library can fill this vacuum. Reading habit has to spring from within the individuals themselves, but, however, the fact remains that an efficient library undoubtedly can bring about a radical change in the outlook of the administrator and consequently on the administration as a whole.

III. Central Secretariat Services Division

The above division in the Ministry of Home Affairs deals with policy matters, relating to Selection Grade, Grade I, Section Officers' Grade, Assistants' Grade of Central Secretariat Service, the Central Secretariat Stenographers Service, etc. in respect of framing and the interpretation of rules, examinations, recruitment, allocation, promotion, confirmation, deputation, etc. and general policy regarding decentralisation and forming of new cadres. It also handles matters relating to the Industrial Management Pool.¹⁷

The Central Secretariat Service consists of Selection Grade, Grade I (Under Secretaries), Assistants' Grade. Till October 1962 all the grades of the Central Secretariat Services and the Secretariat Stenographers Service were managed by the Ministry of Home Affairs. From October 1962, control and management of the Central Secretariat Stenographers Service and the Section Officers and Assistants were

17. Ministry of Home Affairs, Handbook of General Information, 1967, pp. 25-26.

decentralised and were transferred to the respective Ministries and Departments. Similarly control over the staff belonging to Grade I and Grade II, Upper Division Clerks and the Lower Division Clerks was also transferred to the respective Ministries and Departments. The present arrangement is sound. What actually used to happen before was that if any department was in need of a stenographer or a clerk the matter had to be brought to the notice of the Home Ministry. Such an arrangement was undoubtedly dilatory and time-consuming. It was also responsible for continuing ill-will between the Home Ministry and other Departments with regard to the selection of the Central Secretariat Services in these grades. Decentralisation, however, is not complete. The Home Ministry is still responsible to the Cabinet for the overall supervision of these services. For proper co-ordination of these services, the Statistical Cell had been established for collecting, keeping and possessing vital statistics in regard to various decentralised grades.

A Central (Surplus Staff) Cell was set up in the Ministry in February 1966 under the guidance of the Central Secretariat Division. The purpose for this was to arrange for the deployment of staff rendered surplus as a result of the studies conducted by the Department of Administrative Reforms and the Staff Inspection Unit¹⁸ of the Ministry of Finance.

A considerable number of Government servants were declared surplus by the Department of Administrative Reforms and the Finance Ministry. To deal with the surplus staff, a Central Cell was established by the Ministry of Home Affairs. Parkinson's Law operated.

18. Ibid., pp. 26-27.

One department gave birth to a number of semi-departments and caused an increase in the number of staff in the long-run. This was no doubt realised by the Home Ministry and efforts are being made to bring about co-ordination. Active steps are being taken to appoint co-ordinating Agencies which are on increase along with the increase in the number of Departments, Divisions, Branches and Sections of the administrative machinery. If this process remains unchecked the need for chief co-ordinating Agencies to co-ordinate the activities of the Co-ordinating Agencies is bound to arise. A practical solution to the problem of co-ordination is yet to be attempted. Commissions and Cells have a tendency to increase the already increased paper work and multiply the staff engaged in it, and such a remedy, in the course of time, might prove worse than the malady. An inflated administrative set up is by its very nature top-heavy, slow-moving and wasteful. What is needed is proper shearing and trimming and not an unwieldy expansion.

IV. Establishment Division

The main functions of the Establishment Division are to formulate general principles, rules and regulations governing the services of the Government of India i.e. the recruitment and promotion policies, principles of seniority fixation, conduct and discipline, rules of Government employees, etc. The Division advises Ministries/ Departments of the Government of India regarding the interpretation of such rules and regulations. Service conditions which have a financial bearing are the main concern of the Ministry of Finance, but the Establishment Division of the Home Ministry is consulted in this regard and the Division has to offer comments on those service

conditions also, keeping in mind the general requirements of services. Administrative matters relating to the Central Secretariat Training School and the Union Public Service Commission are looked after by this Division and two services, namely, the Indian Economic Service and the Indian Statistical Service are operated by this Division.¹⁹

The Division keeps vigilance on the working and functioning of the Secretariat Training School, which was set up in 1949 to provide initial training to directly recruited Section Officers, Assistants and clerks besides conducting refresher courses and specialisation courses relating to Cash and Accounts, work study, typing and stenography, etc. It keeps in touch with the Union Public Service Commission also. The Home Ministry, under the provisions of Chapter II part XIV of the Constitution advises the President on matters relating to recruitment, training, promotion, demotion, etc. of the various All India and Central Services. It also presents annual reports before Parliament. All these activities were to be initiated by the Establishment Division of the Home Ministry. Besides administrative control over the Union Public Service Commission budgetary provisions for the expenditure incurred by the UPSC are incorporated in the budget of the Ministry of Home Affairs by the Establishment Division. Moreover the Division keeps a record of the communications between the UPSC and other Ministries and Departments. All such communications pass through the Division.

The provision with regard to the expenditure incurred by the UPSC to be made in the budget of the Home Ministry violates the

19. Ibid., p. 27.

principle of financial autonomy. The UPSC being a statutory body should have a budget of its own. Financial strings should not have been left in the hands of the Ministry. The Establishment Division could have as well entrusted with the general supervision over the UPSC refraining from day-to-day interference in the financial affairs of the UPSC. The penny-pinching attitude on the part of the Establishment Division should be done away with. The communication between the Ministry and the UPSC should be direct. There are frequent reports of delay in matters of selection of personnel by the UPSC due to too many intermediaries. As far as possible frequent references to the UPSC should be reduced to decrease paper load. The practice of face to face talk, if followed, will surely result in greater efficiency and quickness than what it is today. The important decisions could as well be recorded for future references.

V. Administrative Vigilance Division

The Administrative Vigilance Division was set up in August 1955 in the Ministry of Home Affairs to combat increasing corruption, root and branch, in all directions of administration, without exception. The Division provides the necessary drive, direction, advice and co-ordination to ensure substantial and vigorous action against lack of integrity in administration. It functions in an advisory capacity in keeping with the basic principles that initiative for prevention of corruption in a Ministry/Department in its sphere of activity must come from within that Ministry/Department.²⁰ It is primarily concerned with allegations relating to corruption and

20. Ministry of Home Affairs, Handbook of General Information, 1967, p. 23.

high-handedness against the Government servants. The complaints against the public servants are made either to the Central Bureau of Investigation or the concerned Department. The Administrative Vigilance Division exercises control over the Central Bureau of Investigation and provides necessary direction and drive. It also handles matters concerning Establishment Affairs of the Central Bureau of Investigation relating to the issue of sanctions for prosecution in cases investigated by the CBI where such sanction is required to be issued in the name of the President.²¹

The Administrative Vigilance Division functions on the basis that each Secretary and Head of the Department is responsible for checking corruption in his Ministry/Department. They are assisted by Vigilance Officers in cases relating to members of the All India Services, Central Secretariat Services (Selection Grade and Grade I) etc.

The Division also deals with matters relating to anti-corruption legislation, for instance, the anti-corruption Law (Amendment) Act, 1964, streamlining the legal provisions for dealing with bribery and corruption was brought into force in December 1964. Regulation of accreditation of business representatives as to keep out persons with unsavoury antecedents and reputation was introduced in September 1965.²² Recently the Home Ministry appointed a Committee on prevention of corruption under the chairmanship of K. Santhanam which, after studying the problem from different angles suggested various measures to the Government of India, i.e. the Ministry of Home Affairs.

21. Ibid.

22. Annual Report of the Ministry of Home Affairs 1965-66, p. 11.

The Ministry accepted many of its recommendations to root out the evil of corruption from public services in particular and administration in general.

One of the recommendations of the Santhanam Committee was towards setting up of a Central Vigilance Commission which was accepted by the Home Ministry in toto. And the Commission was set up in the Ministry with the following functions;

1. to undertake any enquiry into any transaction in which a Public Servant is suspected or alleged to have acted for an improper purpose or in a corrupt manner;
2. to cause an enquiry or investigation to be made unto;
 - a) any complaint that a public servant has exercised or refrained from exercising his powers for improper corrupt purposes;
 - b) any complaint of corruption, misconduct, lack of integrity or other kinds of malpractices on the part of a public servant including the members of the All India Services even if such members are for the time being serving in connection with the affairs of a State Government;
3. to call for reports, returns and statements from all Ministries/Departments/Undertakings so as to enable it to exercise general check and supervision over the vigilance and anti-corruption work in the Ministry/Department/Undertaking;
4. to take over under its direct control such complaints, information or cases as it may consider necessary for further action which may either be;
 - a) to ask the Central Bureau of Investigation to register a regular case and investigate it, or
 - b) to entrust the complaints, information or case for enquiry i) to the CBI, ii) to the Ministry/Department/Undertaking concerned. 23

23. Report of the Santhanam Committee on the Prevention of Corruption (Ministry of Home Affairs, Government of India), pp. 224-25.

The Central Vigilance Commission has in the sphere of vigilance a status and a role broadly corresponding to an attached office such as the UPSC. It has the responsibility of ensuring that complaints of dishonesty and lack of integrity on the part of the public servants are given prompt attention and are given the necessary punishment.

The Central Vigilance Commission is headed by Vigilance Commissioner, who is responsible for the proper performance of the tasks assigned to the Commission. It renders advice to the Ministries/Departments/Undertakings on matters relating to maintenance of proper standards in administration. Besides, the Chief Technical Examiners Organisation which offers technical advice on engineering matters and the Commissioners for departmental enquiries on disciplinary cases, function as parts of the Commission. The CBI acts as the Investigating Agency of the Central Vigilance Commission. The Commission is also assisted by Vigilance officers in various Ministries/Departments. The Chief Vigilance Officers are appointed in consultation with the Commission and the Vigilance Officers are appointed in consultation with the Chief Vigilance Officer.

The Commission makes recommendations to the Ministry of Home Affairs, after a thorough examination of the cases, as to whether prosecution is to be sanctioned. In case the Ministry does not accept the recommendations of the Commission, a copy of the Report explaining reasons for the non-acceptance of such recommendations be laid before both the Houses of Parliament.

The Commission had disposed of many complaints regarding

²⁴ corruption. But curiously enough, not much is known whether the Ministry had really acted on the recommendations of the Commission. The Annual Reports of the Ministry supplies only vague information that the recommendations of the Commission were accepted by the Government except in few cases. If the Ministry is really wedded to wiping out of corruption, it is desirable to publicise the more prominent cases.

The present grievance procedures are tardy and dilatory. By the time cases are referred to the Commission, after investigation by the Department or the CBI, they are too outdated to keep alive public interest. One solution would be to let the Commission carry on the investigation or enquiry on its own, instead of beating about the bush, a function which it does not discharge at the moment. This would mean additional staff and enhancement of its powers, which calls for a complete reorientation of the functions of the Commission to avoid conflicts of jurisdiction with the regular investigating agencies.

An enlightened and vigilant public opinion against the omnipresent evil is also necessary for streamlining the process. Unfortunately, today the Vigilance Commission cannot take notice of charges against Government servants earning less than 1,000 a month. This implies that cases of 'grease money', which normally accompanies the files and applications at lower levels remains undetected and go scot free. The Ministry has, however, done well to accept the suggestion that the Commission will have the same power as a Court

24. At a recent press conference, Mr. Subimal Dutt, the Central Vigilance Commissioner told the newsmen that the Commission in the past six years has disposed of over 12,000 complaints. (The Hindustan Times (New Delhi), October 29, 1970).

of Enquiry to demand attendance of witnesses compulsorily. This is what the Santhanam Committee had recommended and which should have been implemented much earlier.

VII. The Central Bureau of Investigation

The CBI was set up on April 1, 1968. The Special Police Establishment has been incorporated in the Bureau as its investigating and anti-corruption division. The enquiries are initiated by the Special Police Establishment, a small team headed by a superintendent of police in almost every state. "A day to day diary of the case is maintained, and every fortnight a resume is sent to the Central Cell at Delhi, consisting of an Inspector-General of Police, two Deputy Inspector-Generals and a few others. When the investigation is complete ... the Special Police Establishment seeks the advice of the legal department for the next step. Should the recommendation be a departmental action-censure, demotion or stoppage of increment, the case is sent to the Ministry concerned. If the "closure" of the case is suggested, the allegation is dropped. But when the advice is for prosecution, the case is sent to a court. And to effect a speedy disposal of such cases, most of the States have appointed part-time judges. Some States like UP have whole time judges. ... Helping the SPE ... are the persons known as the Vigilance Officers, one in each Ministry of the Government. The allegations, when substantial are sent to them for a quick 'processing'. In complicated cases, the Vigilance Officers draw on the help of the Administrative Vigilance Division in the Union Home Ministry which has two senior officers, devoting their exclusive

attention to this work.²⁵"

The counter-parts of the Vigilance Officers in technical departments are the Vigilance Engineers who are employed in Railways, Central Public Works Department, etc. Their job is to let the SPE know when and how a particular work gets accepted not even when it is faulty or does not tally with the specifications given. The specialists also deal with the complaints of the bad work or fraud received directly by the department. In the same way the advice of the chartered accountants and other experts is sought when the allegations relate to income tax or Central excise or Customs.²⁶ Frequent meetings are held between the Special Police Establishment and representatives of various Ministries and departments for evolving measures to eradicate the challenging menace of corruption.

During the period, January 1 to December 31, 1964, 1,115 preliminary enquiries and 942 regular cases were registered by the Special Police Division of the Central Bureau of Investigation. Prosecution was launched in 306 cases and 254 cases were decided by Courts. Of these 212 cases resulted in conviction giving a percentage of successful cases at 83.5. The persons convicted include 8 Gazetted Officers, 168 other public servants and 25 private persons.²⁷ In 1966, the CBI registered 2,208 cases against public servants and 258 against private persons. In the previous year the figures were 2,039 and 269 respectively. In accordance with the

25. 'Battle Against Bribery', The New Administrator (Gardar Patel Institute of Public Administration, Madras), Vol. VII, No. 6, April 1960, p. 38.

26. Ibid.

27. Annual Report of the Ministry of Home Affairs 1964-65, p. 10.

policy enumerated a few years back of not passively waiting for complaints but actively collecting information of corruption and misconduct, 68.7 per cent of the cases registered in 1966 arose from informations gathered by the CBI personnel, of these 355 were sent to court for trial, 1,775 were reported for departmental action, 129²⁸ were dropped and 1,566 were under action.

271 cases were decided in courts in 1966 and out of these 230 resulted in conviction and 41 in acquittal giving a percentage of 84.9 as compared to 83 in 1965. Among those convicted, 178 were public servants including 10 international smugglers M/s Walcott and Donze who were sentenced to five years rigorous imprisonment for entering the country with false passports and a group of firms of South India upon conspiracy and cheating in respect of import licences under an Export Promotion Scheme for zari goods.²⁹

The Investigating Agencies set up by the Ministry have done and are doing commendable work. Unfortunately the Ministry of Home Affairs in many of the cases did not had the nerve to take serious note of the cases brought to its notice by its own agencies. For instance, on the demand of a few Members of Parliament for the setting up of a Committee to enquire into the charges of corruption and dishonesty and total mal-administration against the then Orissa Chief Minister, Biju Patnaik, the then Home Minister, G.L. Nanda asked the Central Bureau of Investigation to take up the matter.

The Central Bureau of Investigation submitted its findings to the Government, on the basis of which Biju Patnaik and Biren Mitra

28. Annual Report of the Ministry of Home Affairs 1966-67, p. 15.

29. Ibid., pp. 15-16.

were asked to offer 'explanations'. The findings and the explanations were placed before a Cabinet Sub-Committee headed by the Home Minister. Prime Minister Lal Bahadur Shastri announced in the Parliament on February 22, 1965, that 'in several transactions improprieties were definitely involved for which responsibility had to be borne by Shri Patnaik and Mr. Mitra.' He added that the Committee felt that normal standards of public conduct had not been maintained. He, however, said that there was no proof that Mr. Patnaik and Mr. Mitra 'had personally derived any pecuniary benefit from the various transactions in which they were concerned'. Lal Bahadur Shastri also announced that Mr. Patnaik and Mr. Bitra had accepted his advice and stepped down from their respective positions of Chairman, State Planning Board, and Chief Minister.³⁰

The procedure adopted in the Orissa case was indeed strange. Firstly, the Central Bureau of Investigation of the Home Ministry was asked to verify the charges though they were documented. The CBI was apparently inhibited in its work by the limited scope of enquiry and by the non-availability of all the data it was after. Notwithstanding these handicaps, the CBI did a thorough job and established beyond doubt a prime facie case for a further investigation. Still a high-powered sub-committee of the Central Cabinet took a political decision not to institute a judicial enquiry into the charges. ... Denied the opportunity of judicial inquiry, the opposition had to place the case before the highest tribunal of public opinion and weigh the facts in the scales of natural justice and pronounce their verdict. Accordingly Surendra Nath Dwivedy placed on the table of the Lok Sabha a document

30. S.N. Dwivedy and others, Political Corruption in India (Popular Book Series, New Delhi, 1967), pp. 120-21.

which he certified as a true copy of the CBI Report. ... Mr. Chagla, declared that would not touch it 'with a barge pole', just because it puts the leadership in a spot.³¹ It was the same M.C. Chagla, once the Chief Justice of the Bombay High Court, who was the Chairman of the Committee appointed by the Government of India to conduct enquiries into the famous LIC Scandal, where the then Finance Minister, T.T. Krishnamachari was involved. The Chagla Commission, then, passed remarkable strictures against the Finance Minister's irregularity and his close association with industrial magnets and money-bags. The reasons as to why the same Chagla retraced his steps and bade good-bye to his impartiality and objectivity when he became the Central Cabinet Minister, in the Patnaik Case, are to be definitely sought in political pressures or ulterior motives.

The Central Bureau of Investigation upheld most of the charges levelled against the Orissa leaders, in the case of others; the report said, inadequacy of data prevented it from pronouncing an opinion. That brings in the question of tampering with official files to destroy evidence of malefeasance. The Report also pointed out that some of the files given to the CBI were 'incomplete', with some pages missing. 'In some cases comparative quotations are not available in the relevant files while in some cases although there is (a) clear reference in the note sheets to certain quotations and page numbers these do not appear on the files'. ... The Report puts it even more bluntly when it said in another place that 'there are clear indications of papers being tampered with'.³²

31. Ibid., pp.123-24.

32. Ibid., pp. 126-27.

It is to be noted that concealing evidence or tinkering with it constitute serious offence under the Indian Penal Code. The Ministry of Home Affairs had been accused of doing it as is evident in the case of Patnaik. The Ministry did not appoint a Judicial Enquiry Commission to investigate into the allegations against the Chief Minister, despite the clear verdict of the CBI and repeated pleas of the Opposition leaders to that effect. On the contrary it gave a clean chit to the Chief Minister saying that he did not personally derive any benefit from the transactions, which was from the point of view of administrative expediency and political ethics, highly objectionable and undesirable. The Government of India, i.e. the Ministry of Home Affairs should make it a point to set up a judicial enquiry whenever a proposal to that effect is made either by the CBI or five or more Members of Parliament. Only then that the canker of corruption can be rooted out. It can never be eradicated by sporadic actions or pedantic assertions. It would bring bad name to the Ministry of Home Affairs if such cases are allowed to be repeated in future. Despite official handicaps the CBI and SPE performed their tasks in an impartial manner. As a safety valve against the official encroachments one remedy would be to allow the CBI to take cases directly to the Cabinet or Parliament instead of submitting its report to the Home Ministry. Such a change will call for enhancement of its powers and jurisdiction as well as increase in its staff. The Home Ministry should not turn a jaundiced eye towards the CBI if it brings to light cases of corruption where notable politicians or political high-ups or big businessmen are involved. The very purpose of the CBI will be defeated if its reports go unheeded by the Ministry. The Ministry

had yet to evolve a code of conduct for itself. Impartiality on the part of the CBI employees or staff working in the Vigilance Division shall not be regarded as a disqualification for their future prospects, even if the findings relate to Ministers of Cabinet rank provided they are supported by facts and figures and duly documented, as was done in the case of Patnaik.

Secondly, Vigilance Officers attached to the various Departments and Ministries be given effective training in the art of crime detection and other matters related to it. There is acute shortage of Vigilance Officers to meet the hydra-headed monster of corruption, which has its evil tentacles spread all over the country. New training institutions will be able to fill this tragic gap. Thirdly, as Santhanam had suggested; "all records and documents required by the SPE should be made available to them for inspection and scrutiny ordinarily within a fortnight and positively within a month from the date of the receipt of the request."³³ Fourthly, again in the words of Santhanam

as a general rule public servants found guilty of bribery, corruption or criminal misconduct should be prosecuted in the first instance if the evidence is sufficient for that purpose. In other cases departmental action should be taken in the first instance and the question of prosecution would not generally arise. Difference of opinion as to whether a prosecution in a court or departmental action should be taken in the first instance be referred to the Central Vigilance Commission for advice.³⁴

Persons found tampering with evidence should be dealt with severely and exemplary punishment awarded to avoid repetition of such

33. K. Santhanam, Report of the Committee on Prevention of Corruption (Ministry of Home Affairs, Government of India), p. 133.

34. Ibid., p. 135.

nefarious cases. Finally, in view of the rapid advance of corrupt practices, the Special Police Establishment shall be deployed all over the country, which inevitably implies an increase in its strength and functions.

VII. Public Grievances Section

Public grievances have shot up in recent years due to mal-administration and indifference of the officials towards general public. Reports of self-aggrandisement, temptations, non-acknowledgement of representations and applications, delays, passing the buck, gross under-estimation of the Essentials and magnifying the grandiose, outright sycophancy and the general alienation of citizens from administration are not uncommon. In order to overcome this virus, the Government of India, on the advice of the Ministry of Home Affairs decided in April 1963 to appoint a Complaints Officer in each of the Ministry and Department of the Government, to attend to the grievance of the people. To co-ordinate the activities of the different Complaint Officers of various Ministries and Departments, a Commissioner for Public Grievances was appointed in the Ministry of Home Affairs.

The work relating to public grievances was being handled by a Commissioner for Public Grievances of the status of Additional Secretary from December 7, to July 1967. The post of Additional Secretary had since been abolished. The work of the former Commissioner for public grievances is now being looked after by Secretary (Services) assisted by an Under Secretary. There is a proposal to transfer this section to the new institution of Lokpal and Lokyuktas, when constituted.

The Public Grievances Section has been seriously engaged in the activities assigned to it. Up to the end of the year 1967, the number of complaints received in the Public Grievances Section of the Ministry was 2,227. Of these 1,680 have been dealt with. The rest are at various stages of correspondence with the Ministries/³⁵ Departments concerned. It is on the recommendation of the Public Grievances Section the Ministry has asked the various Ministries/Departments/Offices which have dealings with the public to give wide publicity to the arrangements made by them for redressal of public grievances. They have also been asked to explain the policy and the procedures for availing of the facility as also the names and addresses of officers who could give the common man the correct information and to issue brochures, pamphlets, and press notes giving full details of grievances, procedures and other relevant information required by the members of the public.³⁶

The Section is pursuing further the question of strengthening the grievances machinery in various Ministries/Departments/Offices including public Undertakings of the Government of India. The Ministries etc. have been advised that special efforts should be made for handling public grievances work in such a manner as to prevent the cause for grievances and to provide quick and effective redress for such grievances as do arise. The following suggestions have been made to them;

- (1) Letters from citizens should be acknowledged. Decisions on their representations should be taken expeditiously.

35. Annual Report of the Ministry of Home Affairs 1967-68, p. 94.

36. Ibid.

- (11) In the cases of repeated representations from the citizens who are not satisfied with the decisions of the lower authority, the higher authority should carefully decide their cases and ~~communicate~~ their decisions to the aggrieved person.
- (111) The Complaints Officer in each Ministry should inspect the complaints cells set up in the Ministry and its attached and subordinate offices periodically with a view to bringing about improvements in their working. 37

In spite of all this, it is regrettable that the Commissioner for Public Grievances in his first report to Government had to lament over the inadequacy of the machinery for dealing with public complaints. Despite the Complaints Officers in each Ministry, delays continue to take place and replies, if sent, are too 'brief' and 'laconic' to satisfy the citizens. The Commissioner, therefore, stressed the need for appointing Joint Secretaries to Government, as complaint officers, with sufficient time at their disposal to undertake independent investigation. ³⁸

The Section needs to be further streamlined so as to inspire confidence in the citizens that their grievances are being heard and dealt with, which is essential for the success of any organisation. It would be in the fitness of things if the Public Grievances Section takes into confidence eminent persons right from the District level, not because that their co-operation is necessary but their talents can be effectively utilised in removing grievances and running the administration on sound lines. A close contact between the Public Grievances Section and the State, District and village officers will go a long way in the achievement of the ultimate target, removal of

37. Annual Report of the Ministry of Home Affairs 1969-70, p. 126.

38. The Hindustan Times, October 31, 1966.

public grievances. The Government shall realise that grievances can never be dealt with by force of power and authority. Policies to that extent have to be worked out. To say, for instance, we have appointed a Committee of three wise men. Accept whatever they suggest and don't argue whatever you feel is no way of settling problems. It is only a way of ex³⁹erbatating grievances and a better price may have to be paid for it. Moreover the best way to evade an issue is to appoint a committee and by the time it submits its report, public interest hardly persists. Hence utmost care be taken to avoid multiplying committees and commissions and concentrate on solving problems directly. The bureaucratic attitude should be shed away, which instead of solving grievances have a bad tendency to dilate them to unlimited proportions.

VIII. Department of Administrative Reforms

To arrest the deterioration and to bring about administrative efficiency the Committee on Administration, in 1963, recommended for establishing a High Power Commission on Administrative Reforms. Accordingly, the Department of Administrative Reforms was set up in March 1964, incorporating within itself the erstwhile O and M Division of the Cabinet Secretariat. The functions envisaged for the Department were;

1. Locating important problems and initiating studies in respect of them;
2. examining the organisation and procedures of selected departments with the object of eliminating problems of corruption at different points of the administrative machinery;

39. A.D. Gorwala, On Matters Administrative (Popular Book, Bombay, September 1968), p. 83.

3. examining the question of setting up a machinery for redress of grievances of citizens;
4. making a rapid scrutiny of past recommendations and conclusions of committees and individuals with the object of picking up of points that can and shall be implemented without further enquiry;
5. preparing simultaneously the ground for a comprehensive investigation of the entire administrative system in India; and
6. continuing with the work of the O and M Division.

40

Thus, in short, the Department was set up in the Ministry of Home Affairs 'to deal with the problem of reform, reorganisation and modernisation of administration at all levels so as to make it an efficient and sensitive instrument for carrying out the task of economic development and social welfare and for achieving the general social objectives which the country has set before it, and the need for setting up an agency for evolving a machinery for the redress of grievances of citizens arising from unsound procedures, wrong though not necessarily dishonest exercise of discretion, delays, lack of courtesy and the consideration of the official dealings and the like.'

41

The Department is under the charge of a Joint Secretary who functions under the Home Secretary. Though the Department is a part of the Ministry of Home Affairs and its nature of work and type of staff has led to an organisational pattern of its own. The staffing pattern in the Department is study-oriented, consisting of administrative analysis, research officers, Deputy Secretaries, Under

40. Annual Report of the Department of Administrative Reforms 1964-65, pp. 1-2.

41. 'Recent Developments in Public Administration', Indian Journal of Public Administration, April-June 1964, p. 323.

Secretaries etc. The pattern of the Department reflects the dual nature of its functions of both as a staff agency and a Line agency. Staff in the sense that it advises the Government about the ingress of administrative measures and line in the sense of making and carrying the studies and to see that they are properly implemented.

The responsibility for initiating reforms, however, rests with the Ministries/Departments concerned. The reforms must spring from within the Ministries and Departments. An outside authority can at best recommend measures to build up administrative and organisational efficiency. Besides the will to accept the recommendations, the determination to implement them is also necessary. Lack of proper implementation will defeat the very purpose of reforms, however lofty and high-sounding they may be. For this each department and Ministry in the Government has its own O and M Unit. The role of the Department extends in keeping in touch with these units and to provide expert guidance on the suitability of particular reforms. At the state level too, it acts a catalyst co-ordinating the various administrative reforms and rendering advice and the necessary direction. The Department also publishes a fortnightly journal entitled Glimpses in Administration containing articles concerning the various avenues of administration where administrative improvement is possible and pinpointing new techniques of administration.

Curiously enough, in January 1966, the Administrative Reforms Commission was created and consequently the subjects falling under the jurisdiction of the Department of Administrative Reforms were integrated with those of the Administrative Reforms Commission. As a result, the work of the Department has been geared to the new

situation and much of its capacity in the field of management advice has been made available to the Commission without prejudice to the studies and the standing items in respect of which the Department is committed.⁴²

'This is for the first time that a comprehensive enquiry into public Administration in India will be undertaken from an all-India prospective. ... The Commission will give consideration to the need for ensuring the highest standards of efficiency and integrity in public services, and for making public Administration a fit instrument for carrying out the social and economic policies of the Government and achieving the social and economic goals of developments and also one which is responsive to the people.'⁴³ In brief the Commission will consider such matters as the machinery of the Government of India, procedures of work, centre-state relations, problems relating to financial administration, problem of redress of citizens grievances, etc.

However, it be noted that it was never the intention that the separate identity of the Department of Administrative Reforms should come to an end, with the setting up of the Administrative Reforms Commission. On the contrary, it was felt that the position of the Department as a vantage point from which initiative for administrative improvement could flow and measures of reform put through on a continuous basis should be maintained and developed further. A strong department could, in particular, help to ensure effective

42. Ministry of Home Affairs, Handbook of General Information, pp. 22-23.

43. 'Recent Developments in Public Administration', Indian Journal of Public Administration, Vol. XI, No. 4, October-December 1965, p. 777.

implementation and follow-up of the Commission's recommendations in due course. The department, therefore, continued to function vigorously in certain areas, although there was the limitation that most of its working capacity was booked for the work of the Commission. Purely departmental activities ranged over three fields: Management advice occupied the first place, despite the fact that with the appointment of the Commission the body rather than the department became the main channel for this work. The next place went to standing items peculiar to the work of administrative reforms, the more important of them being training in work study and techniques of administrative improvement, gathering information about developments in Public Administration in India and abroad, research and documentation, and dissemination of ideas through journals and otherwise. And finally, the follow-up of the Commission's recommendations submitted in its interim reports and the recommendations of study reports formulated in the discharge of the management advice functions of the department formed a significant item of work.⁴⁴

It is encouraging that some States had been sending their O and M Officers to the Department of Administrative Reforms on study tours. During the year 1966-67, the Government of Andhra Pradesh availed of this opportunity. The response from other States is not equally encouraging. Instead of depending on states for sending O and M Officers, the Department itself could as well ask the State Governments to send their O and M Officers on study tours after a certain period, say a year or two. If this method is

44. Annual Report of the Department of Administrative Reforms 1966-67, pp. 1-2.

method is followed, all the State Ministries/Departments will have O and M Officers with practical experience of the Central Government, in due course of time.

The Administrative Reforms Commission appointed a number of Study Teams to examine different sectors of administration. One of such teams was on Problems of redress of citizens' grievances which submitted its report on November 10, 1966. The Government have considered the Commission's report and it has been decided to create a statutory machinery to enquire into complaints of injustice due to maladministration or complaints alleging corruption, in so far as the Central Government is concerned. The implication of this is that grievances and allegations relating to State Ministers and Secretaries which were recommended for inclusion in the Lokpal jurisdiction by the Administrative Reforms Commission will be left out for the present. The machinery will be headed by a Lokpal who will look into grievances and allegations arising out of the administrative acts of Central Ministers and Secretaries. He will also co-ordinate the working of the two other functionaries envisaged in the machinery. The latter functionaries will have the status suggested by the Commission for Lokayuktas. While one of them will have primary authority to go into grievances, involving Government servants lower than Secretaries. Necessary legislation in this regard is proposed to be introduced in Parliament in the near future.⁴⁵ So far (till the end of 1967) no such legislation is introduced in Parliament. An early legislation to that effect shall be introduced, else the very purpose of the Commission will be defeated. However, it does not, in any way, connote, that the

45. Annual Report of the Ministry of Home Affairs 1967-68,
pp. 27-28.

Ministry of Home Affairs should rubber stamp the recommendations of the Commission. The recommendations can as well be modified suitably and implemented. Unnecessary red-tape in the implementation of accepted recommendations will certainly curtail administrative efficiency and vigour.

Likewise the Department of Administrative Reforms is making rapid progress. The department continued to maintain liaison with States in the field of administrative reforms, functioning as a coordinating agency to the extent it was possible for the department to do amidst its preoccupation with the Commission's work. It has also undertaken other projects, viz., Defence matters and Himachal Pradesh Administration. In addition, the Department also started on-the-job training course for assistants working in O and M units, which continued till the end of July 1967. "A total of 62 assistants were trained during the period (1966-67) and with this all the O and M units in the Ministries/Departments will be able to have their assistants trained.⁴⁶

The Department of Administrative Reforms have been carrying out studies evolving better methods and procedures of work. Some of the changes made as a result of these studies have led to a reduction of the work load and consequently a reduction of staff needs in Government offices. Some surplus staff has also been identified in course of the studies carried out periodically by the Staff Inspection Unit of the Ministry of Finance. And after reviewing the existing arrangements for replacement of surplus personnel, the Government of India decided upon a new scheme for

46. Ibid., pp. 11-12.

deployment of surplus personnel. A Central (Surplus Staff) Cell was set up in the Ministry of Home Affairs with effect from February 26, 1966 to arrange for the deployment of staff declared surplus. The scheme drawn for this purpose visualises the transfer of all personnel identified as surplus to the Central Pool so that their parent organisations are physically relieved of such surplus staff. On transfer to the Central Pool the surplus personnel would continue to receive the pay and the allowances in their previous scales till they are absorbed elsewhere up to a maximum period of six months. Where placement have not been decided upon and some delay is anticipated on this account, the surplus staff will be granted special leave which would be on full pay and allowances and will not be debitable at the normal leave account.⁴⁷

In order to effect speedy re-deployment of surplus staff a ban has been imposed on direct recruitment to all ministerial non-gazetted posts under the Central Government. Normally the junior-most persons in a cadre have to be declared surplus and surrendered to the Central Pool, when the strength of a cadre in the Ministry or office is reduced as a result of the studies by the Department of Administrative Reforms or the Staff Inspection Unit. There would, however, be no ban to other persons higher-up in the seniority ladder opting for placement in the Central Pool in order to avail of voluntary retirement benefits. In order to facilitate deployment of surplus personnel, the Central cell has organised at the Central Training Schools, training schemes to enable the staff of its rolls to acquire fresh skills like stenography, accountancy ... etc.⁴⁸

47. Annual Report of the Ministry of Home Affairs 1966-67, pp. 24-25.

48. Ibid., p. 26.

Administrative efficiency is largely a matter of human attitudes. A well-knit organisation with sound procedures are no doubt necessary but this is not all. Human factor in administration at no cost should be underestimated. The focus in administrative reforms should be in the area of human motivations and attitudes. Frequent retrenchment of officials from Government service is in no way desirable, especially when unemployment has shot up to unlimited proportions. That will further aggravate the situation. Serious studies are yet to be undertaken by the Commission and the Department on the problem of staffing. Efficiency among staff cannot be produced like a rabbit from a magician's box. It needs practical approach to the problems with which they are faced. Efficiency of administration, in first and last analysis depend upon the efficiency of the staff engaged in various government Departments. It is they who circumscribe the entire panoply of the State. Moreover, the Department of Administrative Reform should mainly confine itself to: (a) studies on administrative reforms of a foundational character, (b) building up of O and M expertise in Ministries/Departments and training the personnel of their O and M Units in modern techniques of management, and (c) advice and guidance to the O and M Units in effecting administrative improvements and reforms.

Delays have become a regular feature with our archaic administrative structure, which has in the recent past, terrifically increased in size, proportion and dimensions, engulfing the entire

49. Report of the Administrative Reforms Commission on the Machinery of the Government of India and its Procedures of Work (Government of India, New Delhi, 1968), para 15(1).

gamut of daily life. And the present machinery has proved woefully inadequate to meet the high hopes and plans, which the country has set before itself. "Delay in taking decisions, if not avoiding them, is the most serious malady. The buck must be passed - under some pretext or subterfuge - "refer the matter to an expert committee"; "ask for further details"; "go in for a thorough review"; or, best of all, "pend the case for the present". How readily do these phrases and scores more in the same vein occur to the experienced disposer of files. It is in this context that Mr. Paul H. Appleby talked of pettiness, unimaginativeness, inflexibility and a tempo in which the calendar has more relevance than the clock.⁵⁰ The Commission has still to undertake studies in this field. Proper definition of individual responsibility, simplification of procedures, clear identification of functions of each employee in the administrative hierarchy, proper discipline, vigorous check against the frequent disguised political interference may help in overcoming some of the evils, besetting the administration. Confused and hotch-potch hierarchical stages and the avoidable multiplicity of work have proved cogs in the wheel making it burdensome for the O and M Unit to think, plan and recommend measures. This area also remains uncovered by the Department and the Commission. A mere change in posts, here and there, is no reform. It requires a change in the basic principles regarding administration which calls for a daring and debonair approach to the problem on the part of the Department of Administrative Reforms.

50. R. Dayal, 'How to streamline Bureaucracy', The Hindustan Times, March 18, 1970.

The way in which the ARC has been functioning is not what it ought to have been. For instance its report on Scientific Departments published a few months back was indeed a "curious document". The study team was appointed in mid-1966 with Professor Thacker as chairman and nine members including seven distinguished scientists, one well known industrialist and a senior civil servant. Professor Thacker submitted part I of the study team's report to the ARC in March 1968 following which he resigned. He discovered that what he thought were "certain significant gaps" in the report already submitted and accordingly wrote to the ARC chairman, Mr. Hanumanthaiya suggesting that he would like to revise this report in co-operation with the other members. Hanumanthaiya blessed the proposal. Professor Thacker's Report was considered as "withdrawn" and Mr. Kunte submitted his report last August. On publication it now transpires that this document has been signed only by Mr. Kunte who says he has the agreement of the civil servant member. The other eight members have not signed the report and some of them have stated that they would like the earlier Thacker Report to be regarded as their minute of dissent. This is very odd situation and can only further devalue the ARC. The Commission itself has yet to pronounce on Scientific Departments and it is not known when it might do so. Meanwhile the ARC Chairman has said he will be resigning shortly. The two reports of the Study Team differ in four areas. The scientist members favour evaluation of the work of the major scientific agencies by special review committees rather than by an expert agency like COGT. They advocate direct recruitment of scientific personnel through the General purpose - UPSC. They also favour direct purchase of equipment and material

by Scientific Departments rather than through the Directorate-General of Supplies and Disposals. The Study Team refers to two reports submitted to the Government by the Committee on the Organisation of Scientific Research on the research laboratories in the Departments of Civil Aviation and Metereology respectively. These have been gathering dust for years and no action appears to have been taken on them. The former Scientific Advisory Committee to the Cabinet has also drafted a model constitution for laboratories and scientific institutions. This was accepted by the Cabinet and a directive was issued as far back as April 1964 for its adoption. But, the Study Team plaintively notes, "the directive has yet to be complied with". None of this suggests any great seriousness on the part of the government in organising Indian science effectively and harnessing it to clearly defined objectives. The ARC too has not made a notable contribution in this direction.⁵¹

To be fair to the Commission it ought to be pointed out that the Commission in certain areas of administration undoubtedly suggested far-reaching reforms. To cite few instances it highlighted the increasing tendency among Ministers to go on tours. "The ARC Study groups has got to the root of the matter when it states that the tours of the Ministers not only hold up the disposal of their work at the headquarters but also unsettle the work of local officials. Their absence from the capital mean that an industrialist or some other person who wishes to meet a Minister on urgent business is unable to do so. Decisions on various

51. 'A Curious Document' (Editorial), The Hindustan Times, January 17, 1970.

matters get delayed.⁵² The above suggestion, if implemented, would result in considerable saving for the exchequer and quick disposal of cases. In its 19th Report, the Commission suggested the rising of status of P and T Department to that of the Railway Ministry. In his forwarding letter, the Chairman of the Commission, "Mr. Hanumanthaiya stressed the importance of inculcating in the P and T staff the true spirit of service, courtesy and helpfulness on which the public image of the department largely depends."⁵³ The P and T Department really deserves the active consideration of the Government. It would be worthwhile if thought be given to the above recommendation of the Commission.

It is to be noted that the Commission is only an advisory body. The determination to bring about reforms primarily should rest with the Departments/Ministries concerned. They should be in-built and not be considered as an extraneous watch-dog. The Commission cannot ask the Home Ministry to see that its recommendations are duly acted upon. It is curious that many of the Commission's reforms did not find favour with the Home Ministry. For instance, the Ministry rejected one of the far-reaching recommendations of the ARC that "the IAS should be treated as "General-purpose service" with limited revenue and magisterial duties and that the more complex and specialised administrative tasks should be left to Functional technocrats". Commenting on this the editorial has summed up; "It was hardly expected that the Secretaries in committees should find proposals that were not only

52. The Sunday Standard (Vijayawada), December 14, 1969.

53. The Hindustan Times, May 17, 1970.

hurtful to their amour propre but also meant a virtual deprivation of their inconsiderable power. Behind the functional arguments about the relative merits of the "generalist" and the "specialist" lurks a fierce hierarchical struggle and many of the arguments on both sides are no more than an elaborate rationalisation of divergent interests. The Indian administrative tradition has, for historical reasons, been amateurists, being at its best a government by paternalistic men. But the increasing complexity of modern administration makes it necessary that the decision-making is left to people with specialised knowledge. A merely commonsensical approach is inadequate. This fact is obliquely recognised in the way specialists are inducted at all levels, in the process, but without the appropriate status or authority. This leads to considerable frustration among the technical advisers who find themselves career-wise, headed for a dead end. It is not that the IAS men are incapable of acquiring the skills necessary for taking decisions on specialised issues. All that is suggested is that they should acquire them. One way of ensuring this would be to recruit into the service a certain number of men with a technical background and then plan for their careers to fit them for these tasks. What is required is a broadly professional rather than an amateur approach. It is true that the specialists can be the dupes of their own specialities. But in their case the further training they should get in the more general aspects of management and administration.⁵⁴ The general trend in administration is towards employing more and more technocrats. Even a tradition-bound country like UK has overhauled its administration absorbing

54. 'Dinosaur in Administration' (Editorial), The Hindustan Times Weekly, July 19, 1970.

more specialists, in the light of the recommendations of the Fulton Committee. Public opinion in India also clamour for such a change. Such a change requires a certain boldness on the part of the Home Ministry to bring about radical changes in administration and departing from institutionalised and outmoded concepts about administration, prevailing at the moment.

One of the reasons why many of the recommendations were rejected by the Ministry of Home Affairs was that both the Home Ministry and the Secretaries' Committees consist largely of ICS and IAS officers, who have their own interests to be amply safeguarded. However, sound a reform may be, if it hurts them even a little, will have the least chances of getting the approval of the Ministry. If a coterie of ICS and IAS officers sit in judgement over the recommendations of a High Power Commission, what is the good in spending lavishly over the Commission? It implies the stronghold of bureaucracy over the entire administration. It would be quite in the fitness of things if a provision is made that a note be placed before both Houses of Parliament by the Ministry of Home Affairs for the non-acceptance of each of the recommendations of the Commission. The ICS and IAS enjoy far more powers and prestige than most of other officers of Government. The Specialists have been awfully denied their due place in administration. The Home Ministry should make it a point not to assign a Generalist any technical or specialised job. It would be in the interest of public services, if as the ARC had recommended, promotion to Deputy Secretaries and above be based on merit rather than the cadre to which the officer belongs, as far as the Central Secretariat Services are concerned.

Later events and developments have, however, indicated that the bulk of major recommendations made by the ARC have been accepted and incorporated by the Government of India with the concurrence of Ministries and departments concerned. Despite the domineering role of the ICS and IAS officers, any changes that the Ministries chose to effect are acquiesced into by the Departments. In a developing economy the effective role of the technocrat will have to replace the complacent role of the bureaucrat. This fact has been amply recognised by the quarters concerned. The coordinating role of the generalist administrator cannot, however, be underrated even in a technicalised administration of a growth-oriented and self-generating economy in a welfare state.

General Evaluation

One of the basic prerequisites of sound administration is cordial relationship between the Secretary and the Minister. Political non-interference in the day-to-day administrative affairs is essential. It is highly detrimental that there is scarce regard for the expertise knowledge of the civil servants on the part of the Ministers, and, conversely, the pathetic inability on the part of the civil servant to withstand politically-motivated pressures of the Ministers. The episode leading to the resignation of G.L. Nanda, the then Minister for Home Affairs posed several administrative problems affecting the delicacy of Minister-Secretary relationship. Explaining the reasons for his resignation, Mr. Nanda in his letter to the Prime Minister, dated November 9, 1966, complained;

On a number of occasions I brought to your notice that I was not getting adequate secretarial assistance. I wanted the set-up to be suitably strengthened. All these appeals were ignored devoid of adequate political support at the level of any Ministry and denied the kind of assistance and co-operation indeed from a civil service set-up not in tune with my ideas. I was made to feel that I had no say in the working of decisions at policy-making level. Have you thought to yourself how I was expected to function with the kind of tools you gave me to work with. ... 55

The above episode highlights the urgency for evolving a code of conduct for Ministers as well as civil servants. Similarly the unfortunate incident of a tussle between the Deputy Law Minister, Yunus Salim and his Secretary sparked off a bitter controversy over the Minister-Secretary relationship. A civil servant may disagree with a Minister, if he is satisfied that his action is right, in the interest of public, but he should not be adamant. He has to place all the facts and figures before the Minister and once a policy is laid down, the civil servant shall not intervene. The Ministers shall not be under the impression that the civil servants are dictating policy matters, nor should the civil servant be made to feel that he is useless cog in the administrative machinery destined to cater to the whims and caprices of the Minister. In this context the recommendations of the Administrative Reforms Commission are worth implementing. It recommended, 'Secretaries and other civil servants need to show greater sensitivity to and a better appreciation of the Minister's difficulties, and to discriminate between minor adjustments on the one hand, and acts of political and other forms of accommodation comprising basic

55. quoted by Sudesh Kumar, Studies in Indian Administration (Educational Publishers, Jullundur, 1967), p. 10.

principles or likely to have substantial or lasting repercussions on efficiency and morale of the services, on the other. A Minister should be held accountable - a) when he fails to formulate policy in respect of a major problem or when the policy formulated is found erroneous or suffers from major weaknesses; b) when he requests to pay personal attention on important issues other than that of policy where such attention is expected of him or wrongly handles such issues; c) when there is a general or minor mismanagement of maladministration in his Department/Ministry; and d) when he commits some act of impropriety. And a Minister should not be held accountable for an act of a civil servant which is a) in express violation of a directive or order issued by him; or b) by implication prohibited by policies already approved by him; or c) is malafide⁵⁶.

A good deal of cordiality in relationship depends on the Head of the Department. He must properly guide the subordinates on whose efficiency depends administrative speed. He has to study the strong and the weak points of the individual subordinates and treat them accordingly. He has to create an healthy environment wherein friction or party spirit or cliques may not thrive. He has to encourage the aesthetic and cultural aspects of his subordinates. This is the real duty not signing the papers that are brought before him and throwing balance on others cleverly escaping his responsibilities when difficulties arise.⁵⁷ He has the responsi-

56. Report of the Administrative Reforms Commission on the Machinery of the Government of India and its Procedures of Work (Government of India, New Delhi, 1968), paras 8(5), 9(1) and (2).

57. G.K.T., 'Government Offices Presiding Officers', The New Administrator, Vol. 11, No. 4, February 1960, p. 23.

bility of heightening the morale and increasing the capacities at all levels below him. A good head of any organisation will expand a considerable part of his energies in upholding his subordinates defending them from unwarranted and ignorant criticism, and thus encouraging them to their best efforts.⁵⁸

The heavy paper work load keeps the Secretaries always busy that they hardly find time to go for inspections and field work. If the time that is now being devoted on the dead-wood of the office be spent on field work, most of the administrative bottle-necks can be effectively avoided. The paper load can be reduced provided sufficient powers are delegated to the rank and file of administration. Attention be also paid to the low salaries that the clerks are paid. It should not be forgotten that pay is one of the determinants of efficiency. Low pay will definitely lead to inefficiency and delay in disposal of files etc. A sense of trust on the part of the high echelons of public services in the subordinates is lacking. Besides, honest dealing with public is yet to be inculcated. It is not only that honesty be observed, but it shall seem to be observed. That will generate confidence in the public. The manner of doing constitute a basic factor for streamlining administration.

Homogeneity of functions has long been regarded as one of the cardinal principles of organisation. Take the Ministry, it deals with the maintenance of internal security, public services, Union territories, centre-state relations, welfare of scheduled

58. Paul H. Appleby, 'Concerning Ministers', Indian Journal of Public Administration, Vol. I, No. 2, April-June 1956, p. 90.

tribes and backward classes and a variety of others. The composite functions of the Ministry and lack of homogeneity is bound to crop up problems, defying very often, solutions. During the British regime public services were looked after by the Home Department which was totally justified, keeping in consonance with the objectives of the government i.e. the maintenance of law and order with a view to further strengthen their rule. To further this end, the civil service was used as the chief vehicle. With the departure of the British, drastic changes were introduced as far as the aims and objectives of State were concerned. The conception of a welfare state, building up of a secular state, socialist pattern of society and the adoption of Planning have completely reoriented the entire administrative machinery, but surprisingly enough more or less the same pattern was followed, which in the course of time has proved totally out of tune with the problems of the present day India. The heterogeneous functions that are assigned to the Ministry resemble to many pieces of cloth in an absent-minded tailor's shop, who does not know how to make a decent garment of them. The Government realising the deficiencies in the set up of the Ministry, has very rightly established a separate department of Personnel, to look after public services and problems connected with it. This should have been created much earlier, but, however, better late than never.

It has become a fashion with the Ministry of Home Affairs to consider every matter falling under its jurisdiction to be confidential, every file to be as secret as the CBI. Most of the reports labelled as 'secret' are hardly secret. The old colonial practice is still in the swim. The offices of various Ministries

and Departments consider themselves to be secretive, not only with the press and the public but also with representatives of the people. Democracy can never function in 'purdah', it functions and it ought to function in an atmosphere of free discussion and proper understanding. The present arrangements in various Departments leave ample scope for Public Grievances' Commissioner to recommend measures to fight back this practice. It does not, however, imply that the Government shall not keep anything confidential. That is in no way desirable as it will open the Pandora's box, leading to confusion and anarchy. It is only to suggest that as far as possible, free access be given to those who are interested in studying the functioning of the various Ministries or Departments and the methods of working and their procedures. Too much of checks and counter-checks would hardly enthuse confidence in those who propose to study the role of various Departments.

Undue delays and large-scale red-tapism have become part and parcel of our administration. It has taken such deep roots that, now, people hardly pay any attention to cases of delays. Commenting on this L.K. Jha very rightly points out;

Mr. Red-tape is a creature of somewhat strange habits. He moves in grooves, he sits on the files, he sleeps over reminders and occasionally, he has been known to eat his own words. He would be a fascinating addition to any zoo, but that is not the place where he lives. His favourite haunt is a Government office. And although the Government offices bear some resemblance to a zoo, people who go to Government Offices are not as easily amused as visitors to a zoo. However laughable his ways may be, Mr. Red-tape provokes not laughter but tears. ... To every proposal, he has an objection. For every solution, he can find a difficulty. 59

59. L.K. Jha, 'Mr. Red-tape', Indian Journal of Public Administration, Vol. XI, No. 4, October-December 1965, p. 680.

Delays in administration reflect the sheer inability of men at the helm of affairs to perform the tasks. The efficiency of the rank and file have to be weighed with the dynamism of those at the top. Setting up of commissions and cells periodically no doubt cures the symptoms but the disease remains in tact. The crux of the matter is that punishment is not forthcoming even in cases brought to book. The heads of departments are found reluctant to take legal action against even those who are found to be at fault, largely owing to the deep-seated fear that the victims may seek the good offices of the MLAs and the Ministers. Poor delegation of authority has also added to the mite of delays. Powers be delegated to officials working at the lower cadres of the hierarchy. Besides delegation, closer supervision on the part of the higher authorities is also necessary, which can be made possible by frequent inspections, surprise visits, personal observations etc. Most of the cases involving delays are because of the hopelessly poor equipment of the lower ranks of public services, most of whom do not know what to do with a paper or a file or a reminder. As a result, they keep pending, sometimes indefinitely, the important files. It is well known that pensions in some cases have been sanctioned after the death of the concerned persons. Lack of training in the art of easy disposal of files has also played considerable havoc with administration. Training system in India lays too much of importance for the higher services and very little attention is paid towards the clerical staff. Pains-taking subordinates working at bullock cart speed within an outdated framework of routines and procedures and faithfully carrying out the orders of the superiors, advised by insufficient number of technical staff, can hardly bring about

efficiency in administration. Refresher courses and intensive on-the-job training is one remedy for this lacuna.

Delays in matters concerning general public are by no means justified nor are they incapable of being solved. They can be solved provided there is will and the vision to do it. One solution would call for joint efforts of Ministers, civil servants and a realisation on their part of the inherent dangers in delays. A second remedy would be effective public opinion and a press which could give widest publicity to cases of inordinate delays. Thirdly, systematic arrangement of files is necessary, for which help could be sought from the O and M Unit. Modern instruments could also be utilised, if finances of the state permit them. Fourthly, frequent scrutiny of all the pending cases by heads of departments may help in improving the present state of affairs. Fifthly, the principle of priorities be strictly observed. Reminders be given a prompt and satisfactory answer, failing which the very objective of reminders get lost in wilderness. Sixthly, maximum time limit should be prescribed for the disposal of a case. Any serious departures from this time limit must be looked into and the defaulters suitably punished. And finally, as the ARC has recommended, clear and comprehensive instructions on the work to be done at the various levels should be laid down and explained clearly to the employees. Similarly, the channel of communication, both up and down the line, should be made smooth, so that rumours, undesirable propaganda etc. in the organisation are eliminated to the maximum extent possible.⁶⁰ These are some of methods, in the

60. Report of the Administrative Reforms Commission on Promotion Policies, Conduct Rules, Discipline and Morale (Government of India, New Delhi, 1967), Vols. I & II, para 25(5).

proper observation and implementation of which efficiency can be enthused in administration. These methods had been suggested, time and again, by eminent persons in the field of administration, but the pity is that they were never heeded to by the Government Departments. The Ministry of Home Affairs could take the initiative with the help of agencies at its disposal with a view to streamlining administration. Whether the Ministry will come forward to meet the administrative challenges is rather difficult to anticipate in view of its indifference in accepting and implementing recommendations of various Committees and Commissions, some of which have been discussed in the beginning of this chapter?

CHAPTER III
MINISTRY OF HOME AFFAIRS AND THE PUBLIC
SERVICES¹

Significance of Public Services

Public services constitute the backbone of administration. The success of administration depends upon the quality and calibre of public services. The higher echelons of public services owing to a highly technical and complicated administration not only aid and advise the Ministers in the formulation and making of policies but also influence indirectly by their expert knowledge in decision-making. Of course implementation of policies constitute their primary responsibility. Theoretically public services are to advise the Ministers about the advantages and disadvantages of a particular policy or policies, and assist them in carrying them out. They have nothing to do with their political aspects, which is the responsibility of the concerned Minister exclusively. But in practice it is difficult to distinguish between political and administrative aspects of policies. Administration and politics have come so close that the traditional concept that politics and administration are two different things have become more or less out of date. Execution of policy is, no longer, the only function of the public services. They act and react upon policy or the course of action and play a dominant role in the formulation of policies. Therefore in this changed set-up public servants have a greater role to play and it is they who determine the ultimate destiny of the nation.

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1. Till 1970 the Home Ministry was responsible for matters connected with Public Services but with effect from August 1, 1970, a Department of Personnel was created in the Government of India and it deals with all matters pertaining to Public Services.

In the words of D.G. Karve, "Public service, is not some impersonal, idealistic concept, such as the nation, the state or the sovereign, but it is the collection of all the individual citizens. When any of the agents of Government are addressing themselves in any capacity to the citizens, they are approaching their master, who has set limits to his own and to the services powers so that the legitimate rights and interests of all citizens should be promoted to the greatest possible extent. This disadvantaged section of the community ought to be approached with more than average consideration. Not only do they share in the total sovereignty of the people but they are a special responsibility of the whole Nation, that is in particular of all citizens other than themselves."²

In a democracy the Public Services constitute a significant factor in the smooth working of the government. Senior servants in all departments have both an opportunity and a duty to contribute their mite in this regard. At its minimum, policy and decisions have to be based, if they are to stand the test of a public debate on ascertained facts and experience. In collecting and marshalling both these for the consideration of political executive, the services play a crucial role. It is not enough for a senior civil servant, either in the secretariat or in Department, to learn from above, what the ministerial policy and Executive decisions in the course of administration are. Indeed, policy as outlined in election programme is immune from rational scrutiny. But once a party assumed

2. D.G. Karve, "Public Services in a Democracy", Indian Journal of Public Administration (Indian Institute of Public Administration, New Delhi), January-March 1964, p. 8.

executive power, implementation of policy raises issues none of which can be taken for granted by the services. Even if ultimately heads decide to stick to a particular policy and decision service personnel must build, for such consideration by Ministers as they are pleased to give, a complete edifice of facts, analysis, reasoning, precedent, and formulation into specific decisions in the light of declared policy of the Government. In decision-making the services have even more significant share than in policy-making. Decisions involve timing, areas and even classes of individuals, though not particular individuals, who are, or ought to be, covered by a broader decision. Though it is not inconceivable, it is in any case very exceptional, that decisions in these respects, namely living, area and class will either go to that level, that the Minister will at that level decide them without going through the factual, analytical and procedural datas prepared for him by the services. In decision-making, it must be admitted, the services have much more to answer for than is generally believed to be the case. Executive decisions of government, very much more so than policy-decisions which go to the legislature are more effectively and more directly influenced by the services who at several stages have an opportunity to do so. The special points which it ought to emphasise in this context are, firstly, that the service personnel concerned must evince greater consciousness both in regard to their functional opportunity and administrative responsibility in this respect, and secondly, that it is these special responsibilities of the higher administrative services which have been taken into account in making special constitutional and statutory provisions affecting their recruitment and organisation. The two features are inter-dependent, and both together play a

significant role in implementing basic features of the constitution.³

The position and status of the public services are far more significant in the context of public administration than that of the Ministers in more than one respect. The Ministers, in most cases, are laymen, who are elected, not for their expert knowledge but on the popular support they enjoy. They are not permanent in the sense that once they lose the confidence of Parliament, they have to quit the office. The public services on the contrary constitute the best available talent in the state. quite often Ministers formulate wrong policies and technically speaking the public service can not block them but they can advise the Minister asking him to review the policy/policies. As much responsibility rests with the services as with the Ministers, the legislature and the judiciary. However excellent the policies a Government may make, are bound to be defeated if loosely implemented or ill-executed. It is the public servants who are to execute and implement them. They can make and unmake governments. It is they, especially in the context of India, a welfare state in the making, to explain to the people the pros and cons of policies from time to time. Moreover, the image of administration is reflected through public services. Administration is not judged by the Constitution or procedures and methods of work but by the treatment that is being meted out to public by the public servants as well as Ministers. It is again for the public services to create an atmosphere congenial for maintaining rule of law in the state. It is precisely because of these enormous responsibilities that public services are especially selected, properly organised and

3. Ibid., pp. 4-5.

effectively safeguarded against frequent political onslaughts, by statutes and constitutional provisions. It ought not to be forgotten that "in a democracy the bureaucracy has to provide the poise, balance and ballast to the political executive made up of the Ministers. If bureaucracy fails to do this then democracy will end in totalitarianism and the extinction of all virtues symbolised by the democratic government".⁴ Bureaucracy and democracy are incompatible. This has been universally recognised. Though it is an evil but has been found to be a necessary evil, and hence inevitable. Lord Bryce went even to the extent of saying that democracy, if it knows its business has nothing to fear of bureaucracy. The only solution against the possible misuse of powers by bureaucracy is to strike a just balance between democracy and bureaucracy. Modern democratic states, with variety of functions can not flourish unaided by bureaucracy or the civil servants. Bureaucracy is usually characterised as the sheer antithesis of democracy. But this is a fallacious assumption. Bureaucracy is an indispensable element of organised administration. Bureaucracy earned a bad name in the context of colonial governments and that stigma still continues. As a matter of fact bureaucracy provides the rock bottom to an otherwise shaky superstructure of a democracy. It is the steel-frame which supplies the element of stability to a wavering political edifice.

Technically speaking, as has already been pointed out, the Ministers formulate the policies; but in practice the civil servants mould and shape the policies. The habit of shifting Ministers from one department to another make the civil servants largely free to run

4. The ICS Tradition, The New Administrator (Sardar Patel Institute of Public Administration, Madras), August 1965, p. 71.

the department, however, subject to the final discretion of the Minister. The role of public servants becomes highly significant during emergency periods. Emergency period is a period of austerity and insecurity; wild rumours, false reports, black-marketing and hoarding come to surface as was evidenced in our country during Chinese and later Pakistani aggressions. Under such contingencies it becomes the responsibility of public services to warn citizens against such practices and to check such tendencies in the country. They also maintain contact with people so that they may not be led astray by rumours, which are common during emergencies, more so in India.

Classification, Selection and Training of Public Services - An Assessment

The efficiency of public services largely depends on methods of selection and training. Training in the words of William G. Terpey, is "the process of developing skills, habits, knowledge and attitudes in employees in their present government positions as well as preparing employees for future government positions.⁵" The Indian Constitution provides for three cadres of services — Union, State and All-India. The trend at present is to create more and more all-India services with a view to generate more national outlook, which is seriously lacking at the moment. At the time of independence there were two all-India services, the ICS and the IPS. Soon after independence more and more all-India services were created and there was an expansion in various cadres. The Ministry of Home Affairs deals with all matters concerning personnel, the All-India and the Central

5. William G. Terpey, Public Personnel Management (D. Van Nestrand Company, Inc., New York, 1953), p. 154.

Services. In order to meet the divergent needs of States, the Home Ministry in pursuance with the recommendation made by V.T. Krishnamachari,⁶ the Indian Administrative Service and the Indian Police Service were expanded. Mere expansion in the strength of the Services is not sufficient. What is required is a well-knit arrangement for the selection of the best available talent in the country and again a well-knit organisation to impart training to the candidates selected. The overall responsibility for all this rests with the Ministry of Home Affairs.

The State and the Central Services are completely separate from and independent of each other; are restricted by the Union and the State Governments respectively and have different terms and conditions of service. There is a provision for promotion or transfer from one to the other unless it be on loan or deputation. However the distinctness between the two services is, to some extent, mitigated in the cadre of All-India services which, as a form of personnel, are perhaps unparalleled except in Pakistan. This cadre was created in 1946 by the Central Government with the consent and concurrence of Provincial Governments. Thus the very way of its origin determined the dual character of the service, namely, a service common to the Centre and the States and composed of officers who are in the exclusive employ of neither and may at any time be at the disposal of either. The control and the management of the service is necessarily a joint affair. The recruitment to the service is made by the Union Government which also makes arrangements for its training,

6. For details see, V.T. Krishnamachari, Report on Indian and State Administrative Services and Problems of District Administration (Planning Commission, Government of India, New Delhi), August 1962, p. 1.

and no final disciplinary action can be taken against any member of this service except by the Union Government. In fact, before any disciplinary action is taken against a member of this Service, consultation with the Union Public Service Commission is required. On the other hand, it is the State Government that pays them and under whose direct control they work. On appointment, an officer is assigned to a State, and unless he is transferred to service under the Union Government, he passes the whole of his career in the State to which he is first assigned, but he remains liable to service anywhere in India. However, the ICS officers, at the time of independence, were given option to migrate from one state cadre to their home state or to the other, and some of them took advantage of the option to migrate. In practice most of the officers have an opportunity of enjoying at least of one spell of duty of three, four or five years under the Union Government; many have more than one such spell. Thus in 1956 the total strength of the Indian Administrative cadre in the State of Madhya Pradesh was 73 of which 21 belonged to the now defunct Indian Civil Service and 52 to the new Indian Administrative Service. Of the 73 officers, 19 were serving the Union Government. Notwithstanding its division among the States, the Indian Administrative Service forms a single service with a common status and common standards of rights and remuneration. The officers belonging to this service occupy almost all the top posts in the State Government. There is another aspect of the dual character of this service, namely, the promotion of members of the State executive service to this cadre. The general result is that the personnel of any department of administration in a State is drawn from two sources of recruitment, and an all-India source and the other State

and the two sources of supply merge into a common stream.⁷

Training

The direct recruits on their selection to IAS, IPS and other All-India and Central Services are sent to the National Academy of Administration at Mussoorie for a year. During the first five months, they undergo training called the "Foundational Course" along with the probationaries of IFS and IPS and Class I Central Secretariat Services. This foundational course was started in 1959. "The idea underlying the course is that officers of the higher services should acquire an understanding of the constitutional, economic and social framework within which they have to function, as these largely determine the policies and programmes towards the framing and execution of which they will have to make their contribution. ... For civil servants in the higher grades, knowledge and understanding of their individual Departments is not enough; they should have an understanding of the machinery of the government as a whole and the inter-relationship of its different parts. Civil Servants should also have a clear appreciation of the role of the civil service in a parliamentary democracy. The functional course is also intended to cover such matters as aims and obligations of the civil service, and the ethics of profession-objectivity, integrity, thoroughness, impartiality, etc."⁸

After the five months foundational course, the IAS probationaries continue at the Academy for seven months more for

7. A. Avesthi, "Role of Civil Service in a Federation", in Union-State Relations in India, by S.A.H. Haqqi (ed.), (Meenakshi, Meerut, 1967), pp. 146-47.

8. V.T. Krishnamachari, op. cit., p. 14.

their professional part of training and officers belonging to other services leave the Academy for their respective training institutions. During the period they study in detail administrative history of India, District Administration, Criminal Law, etc. At the end of the year, the UPSC conducts an examination which is divided into two parts; Part I includes written examination; and Part II, a qualifying test in riding, proficiency in Hindi and regional language, etc. The written papers include political theory, Constitution of India, Law, Five Year Plans and general administrative knowledge. The training is subject to assessment by the Director of the Institute which carries 250 marks. The final ranging of the probationaries are determined on the basis of aggregate marks obtained by them at the Competitive Examination, assessment of the Director and the Final Probationer's Examination conducted by the UPSC.

Before 1961, the IAS probationers were confirmed in service on passing the Probationer's Final Examination at the completion of a year's service. The probationary period has now been increased to two years and confirmation is made after a new entrant has served in the State and has been tested in practical work for a year. After the completion of the work at the Academy the probationers are sent to various States where they undergo practical training or training on the job, the period of which varies from 10 to 20 months, in various capacities, in the State Secretariat, Collector's office, Treasury and Accounts, Inspection of Police offices, Magisterial and judicial work, etc.

There is need for evolving a common pattern of field training for IAS Probationers, which may be adopted by States with modifica-

9. Ibid., p. 15.

tions suited to their local conditions. During their training in the States, the IAS Probationers should be assigned to carefully chosen senior collectors who are known for their interest in training and whose methods of work are considered worthy of emulation.¹⁰

The National Academy was set up to provide;

- (i) a common foundational course for direct recruits to the All-India and Class I Central Services lasting about five months;
- (ii) "professional" training to direct recruits to the IAS for about seven months;
- (iii) two refresher re-orientation courses, each of about three months duration, to directly recruited IAS officers with 6 to 10 years service and those promoted from the State Services;
- (iv) short courses, seminars, conferences, etc. lasting a week to a month, for the benefit of senior officers. 11

So far, the Academy has been able to organise only two special six-week courses. Both of these related to Public Enterprises. The first course held in 1960 was attended by a small number of officers. The second course held in April-May 1962 was attended by 18 officers belonging to Central and State services.¹² The number of courses shall be drastically increased, keeping in view the problems of administration which are on increase. The Home Ministry in consultation with the National Academy of Administration, Staff College and other institutions may initiate a proposal to that effect. Not only this the two courses arranged by the Academy were attended by a few officers, which is not, of course, a healthy sign.

10. Report of the ARC on Personnel Administration (Government of India, New Delhi), 1969, para 33(1).

11. V.T. Krishnamachari, op. cit., p. 19.

12. Ibid.

They ought to develop the habit of attending such courses, as they will help in imbibing a working knowledge related to various problems. This habit is, of course in-built and cannot be imposed by rules and regulations of the Home Ministry.

The Second Pay Commission in its report observed; "The Union Public Service Commission holds a combined competitive examination every year for recruitment to the All-India and Class I and some class II Central Services. A proportion of the vacancies in these services may be set apart to be filled by another examination to be conducted by the Commission for serving civil servants. The age limits may be between 25-30 and the qualifying service may be 5 years. It could be an essential part of the scheme that only those who are nominated by the Departments should be permitted to take the examination; and the criteria for departmental nominations should be not only good work and good conduct but also exceptional promise. A University degree need not be, however, necessary to ensure fair nomination - such as selection by a committee - may be adopted. The examination may be open not only to Central Government employees, but also those working under the State Governments, public corporations and other undertakings in the Public Sector. We are presuming that if a scheme of this sort is introduced it would include the IAS/IPS as well as Class I Central Services. The examination papers should not be of the academic type, but such as would test intelligence, power of observation, analysis and judgement, and knowledge and understanding of public affairs, etc. - in short the kind of abilities that are required in the higher services. About three times as many candidates as there are vacancies might be called for interview in the order of the marks obtained by them at the written

examination. The maximum marks for the interview might not be more than half the total marks for the written papers; and the interview marks should be added to those obtained at the written examination to determine the final rank.¹³"

The main reason for the proposed scheme was to provide young officers in Class II and III services, an opportunity to enter Class I service for which recruitment is direct.¹⁴ This undoubtedly will create incentive among Class II officers which is bound to increase the general efficiency of administration. Unfortunately the above scheme failed to get the approval of the Ministry of Home Affairs and many of the State Governments. Few States notably Madhya Pradesh and West Bengal accepted the above scheme on an ad-hoc basis, in order to meet their present shortage. States like UP and Orissa vehemently voiced their opposition to the adoption of such a scheme. A fresh drive in that direction be initiated by the Home Ministry by restarting the dialogue with State Governments.

In view of the fast deteriorating situation of law and order in the country, the duration of training in magisterial and judicial work should be increased. The present training in these fields is painfully insufficient to meet the challenges of law and order. Training in these fields shall be reoriented so as to meet the new dimensions in law and order position. A revision of syllabus may also be attempted. The years that have passed since independence have shown up the areas in which law and order machinery is vulnerable.

13. Ibid., pp. 10-11.

14. The ARC had also suggested in its report on Personnel Administration, that the quota of vacancies in Class I to be filled by promotion may be increased upto a maximum of 40 per cent where the existing quota falls short of that percentage. (Para 16).

Our machinery with inadequate knowledge of the intricacies of law and order situation has gone through the process of projecting out of pre-tailored administrative clothes; the process of fitting herself better has now begun.

There were frequent reports of irregularity as far as direct recruitment was concerned. V.T. Krishnamachari highlighted this fact that direct recruitment have been irregular in the past and in some States they had been kept in abeyance for so long a period as 15 to 20 months. It is recommended that all State Governments should amend their rules to enable a minimum of 50 per cent of the posts in the State Civil Service Class I and 50 per cent of the posts in the State Civil Service Class II to be recruited only by competitive examination held by the State Public Service Commission. Regular annual examinations should be held to make such recruitment according to carefully devised programme.¹⁵ One remedy would be to appoint a permanent committee under the Chairmanship of the Home Minister to examine whether State Governments are conducting examinations regularly. Cases of irregularities can be dealt with effectively by the Central Government.

Generally speaking a university degree is regarded as one of the basic qualifications for many of the services. For lower posts Intermediate or Matriculation is the basic qualification called for. As far as the higher grades of services are concerned, such a qualification be retained. But for clerical grades, university degree is not essential. If provisions be made for candidates to enter such posts at lower education, much waste can be avoided and persons can

15. V.T. Krishnamachari, op. cit., p. 29.

be employed at an young age, who in their daily course of work will get themselves acquainted with the necessary administrative knowledge and skill. This proposal, if accepted will not only improve the administration but also reduce the over-crowding at the universities and colleges and will go a long way in the improvement of educational standards.

The general criticism with regard to promotion system in India is about personal files. In India it is a common practice that if a subordinate happens to disagree with the superior then that is taken as a sign of insubordination and is no wonder if adverse remarks are entered in the personal file. It is unfortunate that people are obsessed with the feeling that "confidential reports are not made about with the scrupulous care that they deserve and, ... are based excessively on individual likes and dislikes. What is worse in their minds is the impression that unbalanced and incomplete reports are not subjected to the scrutiny that they merit at the time of making relative assessments."¹⁶ Such a tendency will promote a body of sycophants obviously of a lesser calibre. Promotions need not be entirely on the basis of personal files and reports. One remedy to avoid the loopholes endemic in the maintenance of personal files is to constitute Departmental Promotion Committees, wherever they do not exist now, for appraising the merits of the persons concerned for promotion. The chairman of the committee should be an officer at a sufficiently high level. One of the members of the committee should be an officer from a Department not connected with the one

16. R.D. Katari, "What ails our Foreign Service", The Indian Express (Vijayawada), June 24, 1970.

in which promotions are considered.¹⁷ Besides, suitable short-term training courses should be arranged for officers promoted in order to fit them into their new responsibilities.¹⁸ The UPSC can also play an effective role in this regard by developing an adequate system of reporting and inspection to ensure that at least minimum standards are observed in selection and promotion. The Commission may recommend, at their discretion, the annulment of selections and promotions falling short of such minimum standards.¹⁹

Realising the inadequacy of the present training system, recently the Government has intensified the in-service programmes of the Indian Foreign Service. The period of training in the districts has been increased from 3 to 6 months to impart to the new recruits knowledge about India's cultural heritage and so forth. The period of training at the headquarters has also been increased from 3 to 6 months to have a full grasp about the problems relating to the Ministry of External Affairs. Greater attention is being paid to the refresher and mid-career training by taking advantage of course offered by the Defence Service College, Hyderabad, and the National Defence College, New Delhi, and other institutions. Similar changes are yet to be undertaken for other services especially with regard to the IAS.

The oft-repeated criticism of personnel system in India is in the words of Appleby: "... Personnel so selected are arranged self-

17. Report of the Administrative Reforms Commission on Personnel Administration, para 40.

18. Report of the Administrative Reforms Commission on Promotion Policies, Conduct Rules and Discipline and Morale (Government of India, New Delhi), 1967, Vols. I and II, para 12(5).

19. ARC Report on Personnel Administration, para 24(4).

consciously in too firm "classes" and too firm and too many special "services" with barriers between classes and services too high. There is, in consequence, too little sense of one public service. ... On the whole, rather consequentially, there is too much important consciousness of rank, class, title and service membership, too little consciousness of membership in "the" public service. ... Rank has no proper significance except as it identifies responsibilities; here responsibility tends to become diluted and diffused, rank exaggerated.²⁰"

He further observed: "Within the restricted administrative field remaining, controls in the provision, assignment and promotion of personnel and in a constant external reviewing of expenditures in rather petty terms are such that no Ministry may said to have much discretion or much real power within its own small house. The existence of numerous special services and the absence of a unified and a comprehensive public service exaggerates jealousies, rank consciousness and delay in cross-reference and other communication. ... There are too many forms of class, rank and prerogative consciousness, too much insistence on too uniform concentration of communication in formal channels, too much cross reference, including too many reviews of administrative papers by legal officers, too much of control of detail, too much preoccupation with "saving" rupees and with too little with larger effectiveness. Review at higher levels is too often wastefully duplicatory and too infrequently in terms of real concern at these levels and too much in the hands of persons remote from action and programmatic realities. At the Centre most of the

20. Paul H. Appleby, Public Administration in India: Report of a survey (Government of India, New Delhi), 1958, p. 11.

subordinate personnel necessarily engages in this reviewing process, have little knowledge of India at large and too little opportunity through field inspection trips to become so acquainted. The theoretically-common civil service is becoming proportionately a smaller and smaller part of the whole personnel.²¹"

Three-Tier Control of Public Services

The control of public services is vested in the Ministry of Home Affairs. All problems relating to service conditions, pay, promotion, etc. are looked after by the Home Ministry. The Government of India have, of course, no responsibility for purely State services which are exclusively controlled by the State Governments. They are responsible for the Central Services which are organised and maintained jointly on behalf of the Central and State Governments. There are numerous central services required for maintaining a very large variety of posts under the different Ministries of the Government of India. The day-to-day administration of the individual services is vested in the individual Ministry concerned. The Ministry of Home Affairs is responsible for regulating all matters of general applicability to all the services and maintenance of common standards²² of recruitment, discipline, and conditions of service generally. The financial aspects of public services are looked after by the Ministry of Finance. Then there is Union Public Service Commission at the Centre and State Public Service Commissions at the State level. The functions of the UPSC are to conduct examinations; to advise the Central Government on personnel matters, etc. Thus, public services

21. Ibid., pp. 18, 21.

22. Annual Report of the Ministry of Home Affairs (Government of India, New Delhi), 1948.

are subject to three-tier control, by the Ministry of Home Affairs, Ministry of ~~the~~ Finance, and the UPSC, which arrangement is not conducive to sound administration.

The present arrangement is that where personnel arrangements not in strict conformity with usual practice are involved, a matter referred by Finance is by Finance referred automatically to Home Affairs, and Home Affairs is in many matters dependent upon the Public Service Commission. Review in Home Affairs is often done at too low levels. Curiously, the problem is reversed at the Public Service Commission, where almost everything requires Commission's approval. Acting under the same forces of public and parliamentary opinion as is Finance, the Home Affairs Ministry often is similarly negative and at the same time confined by some special rules, laws and constitutional provisions, as well as by administrative conventions.²³

Commenting on the control of public services Asok Chanda observes: "In the British days, the primary functions of the services was the maintenance of law and order. It was natural, therefore, to entrust their control to the Home Department, on which the responsibility wholly rested. Secondly with the progressive Indianisation of the services, it had become all the more necessary to keep a check on the loyalty of the more senior Indian officers, through the reports of the Intelligence Bureau, which was an integral part of this department. These considerations have no longer any validity, yet no adjustments have been considered. The Finance

23. Paul H. Appleby, Re-examination of India's Administrative System with Special Reference to Administration of Governments, Industrial and Commercial Enterprises (Publications Division, New Delhi, 1966), p. 23.

Ministry is equally concerned with service questions, and there is thus an unavoidable duplication of manpower and effort. The major problem of India's administration has been not only the lack of a competent manpower, but also lack of its mobilisation in a rational and economic manner. Apart from other considerations, it has become necessary to consider whether the manpower problems could be left to be dealt with such a subsidiary subject by the ministry mainly concerned with internal security. The importance of this aspect had, on the other hand, been always recognised in the UK, and the attention of the permanent Secretary of the Treasury as the Head of the Civil Service, had been primarily, devoted to the questions of recruitment, training, allotment and subsequent advancement of service personnel. By a recent reorganisation, the Cabinet Secretary has been appointed head of the Civil Service and in that capacity has been designated as Joint Permanent Secretary of the Treasury; this continues to underline the importance attached to the role of the services in the administration of a parliamentary democracy.²⁴

In the UK the Permanent Secretary of the Treasury was, till recently, the head of the Civil Service, and, in that capacity, placed in comprehensive charge of all service questions, including recruitment, training, postings and promotions. Though these responsibilities have now been transferred to the Cabinet Secretary, in his new additional capacity as Joint Permanent Secretary of the Treasury, the logical conception of the civil service having a recognised chief has not been disturbed. On the other hand, this arrangement places the services beyond the pale of political influence

24. Asok Chanda, Indian Administration (George Allen, London, 1967), pp. 92-93.

and ministerial interference; on the other, it creates a feeling of confidence in the officers that their legitimate interests will be safeguarded and their promotions regulated on considerations of efficiency and suitability.²⁵ Similarly in France, the general management of the civil service is the responsibility of a separate Civil Service Division, headed by a Director-General under the Secretary-General who heads the core of the Prime Minister's Office and is also the Secretary to the Council of Ministers.²⁶

Article 309 of the Indian Constitution provides that matters relating to personnel management may be determined by "Acts of appropriate Legislatures". "As an interim arrangement, the Constitution further provides under the proviso to the Article that till such time the necessary legislation is brought before the appropriate legislature, these matters may be determined by Presidential regulations. Although the power of the President under the proviso are plainly of a transitory nature, the Government has hitherto resorted to them in regulating the recruitment and conditions of service of its employees. ... Sometime back this faulty position was taken note of by the Estimates Committee (Third Lok Sabha) in its 93rd Report submitted to the Government. The Committee recommended that the Central Government should bring before Parliament as early as possible, a comprehensive legislation under Article 309 regulating recruitment and all major terms and conditions of service such as pay and allowances, leave gratuity, pension and so on of persons appointed

25. Ibid., p. 141.

26. Estimates Committee Report, (93rd), Third Lok Sabha, Ministry of Home Affairs and the Public Services (Lok Sabha Secretariat, New Delhi), 1966, p. 19.

to public services and posts in connection with the affairs of the Union so that Parliament may have an opportunity to consider them. ...

The Committee also recommended that rules framed by the Government in pursuance of the provisions of the Constitution of any law made by Parliament governing service conditions of public servants should be laid before the Parliament and that there should be a Standing Committee of Parliament which should scrutinise these rules and make a report to the House. ...²⁷ The Home Ministry did not accept the recommendations of the Committee. On the contrary the "Government gave its own interpretation ... to the constitutional provisions. The Government maintained that Article 309 of the Constitution provides two alternative modes for prescribing the methods of recruitment and conditions of service of Government Servants, namely, by legislation and by Presidential regulations. ... The Government, therefore, felt that the legal position is that when the Constitution provides two alternative modes for doing a certain thing, it is not mandatory that one must be preferred to the other or that one is transitory or interim in nature and should be resorted to only for a limited period".²⁸ The Home Ministry by overriding the recommendation of the Committee, has arrogated to itself, the power of making regulations relating to personnel, a power which definitely belongs to the Parliament. Such a step leads one to the impression that the Home Ministry in its keenness to retain its hegemony over the services has sidetracked the constitutional provision and substituted its own control in place of parliamentary control. Such an impression

27. V.P. Kapur, "Service Conditions of Civil Staff", The Indian Express (Vijayawada), June 27, 1970.

28. Ibid.

is, however, not well-founded as the Parliament is always possessed of overriding powers and cannot be hoodwinked by any Ministry if it decides to act.

The Public Service Commissions need re-orientation filling up some of the gaps relating to personnel agencies. Undoubtedly Public Service Commissions in India are organised according to clearly laid down constitutional provisions; but what is missing from the Commissions is a close link with the Government Departments. At present there are no arrangements "for co-ordinating the personnel policies and procedures either at the Centre or the States or an all-Indian level. In UK there is a Standing Committee of Establishment Officers to advise the Treasury on all personnel matters. In USA there is a Federal Personnel Council to attend to this co-ordination. Here, unfortunately, there is no such organisation ensuring co-ordination. It is therefore desirable that there should be a "Personnel Board" both at the Centre and in the States, wherein the officers dealing with Establishment matters of the various Departments and the members of the respective Public Service Commission should be represented under the Presidentship of the Chairman of the Public Service Commission concerned. An exchange of ideas and suggestions periodically, say, at least once a month would ensure greater co-ordination and realism in the States. It is therefore suggested that such "Personnel Boards" be established as early as possible.²⁹ Not only this, "an equitable classification plan, centrally controlled would be an essential ingredient of a sound-merit system as such the Civil Service Commissions are the best suited to shoulder their responsibility. Similarly, the responsi-

29. R.A. Deshpande, "Organisation and Functions of Public Service", Civic Affairs (Kanpur), November 1960, p. 20.

bility for making recommendations to Government on the remuneration of all employees in the Civil Service should appropriately be vested in the Civil Service Commissions and the Government will have the authority to take decisions in the matter. ... The fact that the initiative in this vital area is vested in an authority independent of Government is of great importance, particularly from the employees' point of view. This would also eliminate the necessity of appointing periodical Pay Commissions on the agitation of civil servants for increase in their emoluments.³⁰"

The present arrangement is defective in many ways. Many a time the Commission regretted on the irregular appointments made by the Ministry of Home Affairs. The UPSC in its tenth report had to observe;

The Commission have referred in their earlier reports to cases of irregular appointments and delayed references. Regulation 4 of the Union Public Service Commission (Exemption from Consultation) (1958), lays down that it shall not be necessary to consult the Commission in regard to the selection for temporary or officiating appointment to a post if the person appointed is not likely to hold the post for a period of more than one year and it is necessary in the public interest to make the appointment immediately. The regulation provides however that such appointment shall be reported to the Commission as soon as it is made; that if it continues beyond a period of six months, a fresh estimate as to the period for which it is likely to be last should be made and reported to the Commission; and that if such estimate indicates the appointment is likely to be for a period of more than one year, the Commission shall immediately be consulted in regard to the filling of the post. The Commission regret to note that there continues to occur not only cases where consultation with the Commission has been inordinately delayed but also cases where appointments made were ab initio.³¹

30. Ibid., pp. 20-21.

31. Tenth Report of the Union Public Service Commission, 1959-60 (Government of India, New Delhi), 1960, pp. 10-11.

To avoid such delays in future, the Ministry of Home Affairs should appoint a Reviewing Committee so that it may keep a close watch on such ad hoc appointments and bring the same to the notice of the UPSC, if the concerned Department failed to do so. The Committee shall also be empowered to take necessary action against the concerned authority for the delay in reporting the matter to the UPSC.

The position of the UPSC vis-a-vis the Ministry of Home Affairs with regard to the public services, is purely advisory. Of course the Ministry has to submit a memorandum to Parliament explaining the reasons for the non-acceptance of the recommendations of the Commission. But this provision, in practice, hardly holds any conviction. Traditions are yet to be evolved in this direction, viz., paying serious attention to the recommendations of a high-power Commission like the UPSC. During the years 1950-63, the Government of India rejected 21 recommendations of the Commission.³² Similarly many vital issues involving personnel have been kept out of the purview of the Commission. Pay structures, working conditions, public service standards are some of them. The exclusion of these matters from the Commission's jurisdiction is in no way desirable.

32. For details see:

- a) First Report of the UPSC, paras 18, 29, 35, 38, 40.
- b) Second Report, para 33.
- c) Third Report, para 30.
- d) Fourth Report 1953-54, para 34.
- e) Fifth Report 1954-55, para 35.
- f) Sixth Report 1955-56, para 35.
- g) Seventh Report 1956-57, para 30.
- h) Eighth Report 1957-58, para 24.
- i) Ninth Report 1958-59, para 34.
- j) Tenth Report 1959-60, para 33.
- k) Eleventh Report 1960-61, para 37.
- l) Twelfth Report 1961-62, para 32.
- m) Thirteenth Report 1962-63, para 34.

The Commission's powers be enlarged in these directions so that the problems relating to personnel be considered by an expert body instead of leaving them to bureaucrats. It ought not to be forgotten that in 1920 when a Public Service Commission was constituted for the first time in India, it was an Officials body working directly under the Government of India and the Secretary of State. And it functioned more or less as an adjunct of the Home Department till 1937. But even then, the Commission was far more alert, than the present one, as custodian of merit principle and was keenly critical of Government's arbitrary attitude on matters pertaining to recruitment, promotion, etc. On the contrary, instead of enhancing the powers of the Commission after independence, it has been made to work as an advisory body and is given the status of a subsidiary agency of the Ministry of Home Affairs. What is even worse is that the Constitution does not prescribe any qualifications for members of the UPSC except that atleast one half of its members should be persons with a minimum of ten years' experience in the Government service. Fortunately so for the choice of the members of the Commission had been encouraging, but one should not to take such an optimistic view in such vital matters. Discretion of the appointing authority may sometimes be cast in favour of an inferior person. UPSC is not only a prestigious organisation; on its proper functioning depends the efficiency of the personnel as a whole. Any possibility of a black sheep finding its way in the membership of the Commission due to political considerations or nepotism would vitiate the entire system. What is suggested, therefore, is that some positive qualifications of high academic distinction or vast and varied administrative experience should be clearly spelled out as the prerequisite qualifications for

the members of the Public Service Commissions.

Moreover too much dependence on the Home Ministry should be curtailed as far as possible. The decisions of the UPSC should have a finality about them. This is the sphere where political interference is least desirable. The springs of recruitment should be kept free of political pollution otherwise the neutrality and objectivity which are the hallmarks of a merit system will be eclipsed and incompetent personnel will bring down the standards of administration still further. The advice of the UPSC as staff agency should be binding and no Ministry should have the authority to issue directives to the UPSC, calculated to dictate what its advice ought to be. It is precisely here that the fine but sharp distinction between the Staff and Line functions is scrupulously maintained.

Improving Public Services

The Ministry of Home Affairs undoubtedly is alive to the problem of improving public services. But many an aspect of the public services have remained either untouched or partially attended by the Ministry. The morale of public servants have deteriorated considerably, if not fallen altogether. It is well to remember that "good morale is the most valuable asset of any large scale organisation. It is something intangible. ... It makes for a kinship, binding men together, keeping them in step as they move toward a common worthwhile goal. Its consequences are measured in terms of personal satisfactions, in the constant development of new ideas leading to improvements in methods, and, finally, in more and better output. The roots of morale are embedded in a variety of soils, some tangible and some intangible. They are as varied as are the

factors which make for the well being of the human elements constituting the working force; sound placement procedures; fair wage policies permitting of an appropriate standard of living; assurance of income in periods of sickness, disability and old age; wholesome working conditions; opportunities for participation and growth; recognition of work well done; and, in all things, justice and fair dealing."³³

Independent India inherited the system of bureaucracy that had evolved and grown under British control for over hundred years, replete with its paternal outlook, prejudices, woodenness and bureaucraticism. As Professor Hanson has rightly observed:

Perhaps the most extraordinary thing, to the observer unfamiliar with Indian conditions, was the retention, with only peripheral changes, of the old codes of civil service regulations, reasonably well adopted to the need of a night-watch man state run by an Expatriate administrative aristocracy, but ill-adopted to those of a planned and economically developing society.³⁴

In the wake of independence a majority of people found hardly any difficulty in retaining the civil service, left over by the British. Consequently the hang-over of the colonial era, the 'sun-dried bureaucracy' was retained without any hitch and on the contrary special privileges were extended to the remaining pillars of the British regime, the ICS officers, by a constitutional provision.³⁵

33. William E. Mosher, Public Personnel Administration (Herper, New York, 1950), p. 605.

34. A.H. Hanson, The Process of Planning: A Study of Indian Five Year Plans (London, 1966), p. 290.

35. Article 314 provides, "except as otherwise expressly provided by this Constitution every person who having been appointed by the Secretary of State or Secretary of State in Council to a Civil Service of the Crown in India continues on and after the commencement of this Constitution to serve under the Government of India or of a State shall be entitled to receive from the Government of India and the Government of the State, which he is from time to time serving, the same conditions of service as respects remuneration, leave and pension, and the same rights as disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to before such commencement."

Thus the Constitution has created for itself peculiar anomalies and divided the civil service into two classes, the old ICS and the new IAS. It is an irony of fate that the ICS though form part of the Indian Administrative Services do not come under the jurisdiction of the Union Public Service Commission. The demand for the abolition of the special privileges of the ICS were voiced time and again, by vocal sections of the population but went unheeded. The Government's argument was that very few ICS officers were left in services, some 112 both at the Centre as well as State level and who would be retiring by 1979, hardly holds good. For if privileges that are bestowed upon the ICS for past 21 years are really uncalled for, there is no point in continuing the same, no matter whether the number of such officers are few or large or whether they will be retiring soon. The Home Ministry ought to have been taken note of this discrimination of guaranteeing privileges to a coterie of officers (ICS) at the altar of many (IAS). It is undeniable that the ICS have all along been an asset to the Indian Administration, as far as their competence and integrity is concerned, and have extended their co-operation in the early periods of trials and tribulations in the life of the nation and have maintained peace and tranquillity with consummate success to lay the foundations of a united and integrated India, which the Constitution seeks to establish. Needless to mention the assistance they rendered to the country with their unchanging and inflexible loyalty. But the moot point in this connection is, the new IAS should have been brought on par with the old ICS rather than creating barriers between the two by guaranteeing special privileges to one of them. This has created a sense of discontent in the new IAS detrimental to administrative efficiency.

Frequent strikes by public servants have become common in India. Most of them relate to pay, working conditions, etc. The responsibility of these seasonal outbreaks are equally shared by the Home Ministry as well as Public Services. Demonstrations are a legitimate and democratic form of protest, only when other means of settlement, negotiation, consultation or arbitration, are fully frustrated; and only when they are conducted peaceably. Such actions especially on the part of public servants do incalculable disservice to the cause that they are intended to serve and will tarnish their own image. Nothing is to be gained by a rash display of anger or by pandering to mob passions, on the contrary this will lead to chain reaction, confrontation and have a tendency of fore-closing the possible alternatives. Rumours of one political party or the other helping the protest rallies are not uncommon. It is ludicrous for anyone to enter into an unseemly political competition in actively promoting such demonstrations leading them to a height, which the sponsors may not be able to control. Mob hysteria is to be deplored, the continuation of which will paralyse the whole atmosphere and will lead to a tug of war between Administration and the political arena represented by Ministers, which would not be in the interests of either. A blanket ban on strikes cannot, however, be imposed, as suggested by the ARC.³⁶ What is, therefore, required is for the Government to devise efficient machinery for the timely redress of legitimate grievances arising from conditions of work. And the Government, being the largest and the most important employer in the country shall undertake to behave as a model employer.³⁷

36. Report of the ARC on Personnel Administration, para 46 (1).

37. See the Note of 'dissent' by H.V. Kamath, ibid.

The Ministry of Home Affairs had appointed a number of pay commissions from time to time to go into the matter and offer their suggestions. The unfortunate tragedy with these commissions are that by the time they submit their report and by the time action is initiated, the price situation no longer retains the balance with the Commissions visualise at the time of studying the problem. Undoubtedly salaries had been increased drastically on the suggestion of the pay commissions but they are completely out of tune with the price level in the country. The Government proved to be totally ineffective in checking the growing price level and the consequent fall in the purchasing power of the rupee. Serious steps are yet to be taken to evolve a via media between the rising price level and the pay of public servants.

As a result there had been a drastic fall in the number of candidates taking IAS and other All-India Services examinations. "During 1957, 5,216 candidates sat for the examination (IAS) and of these only 1,010 qualified for viva voce. The corresponding figure for 1962 was 4,446 and 434. The percentage fall from 19.4 to 9.8. A number of causes are mentioned in this connection. Firstly, the IAS has lost its glamour from financial point of view. When business executives get fabulous salaries and without much responsibilities and less liability to public criticism the present day young man is tempted to prefer the business line. There is also no dancing to the tune of politicians or Ministers in the business field."³⁸

To avoid the best talents going over to the Private Sector a rational commensurateness between Government jobs and jobs in

38. New Administrator (Sardar Patel Institute of Public Administration, Madras), Vol. VII, Nos. 1 & 2, November-December 1964, p. 16.

Private Sector be chalked out. Mr. Richard Taub, an American scholar undertook a survey in the State of Orissa during 1962-64 observing administrators in action. "The technique of his study was detailed questionnaire followed by a personal interview of top civil servants of the State. In all he was able to interview 68 of them, a representative sample which included 35 administrators, 10 politicians, 9 academicians and 12 engineers. Of the 34 administrators, 23 were from the IAS, 2 from the ICS, 3 from the Audit and Accounts Service, and 6 from the State Civil Service. ..." The results of his study highlighted that "many of the civil servants feel disappointed with their jobs and, in fact, not one of them wants his children to take the same career. The lack of job satisfaction has arisen, according to Mr. Taub, owing to a shift in the nature of responsibility attached to the civil servant and a drastic reduction of real incomes." The report also revealed:

The administrative group has been subject to continuous pressure on the one side from the political wing, which now functions in the role of superiors, and on the other from the technical services which feel they do not get adequate recognition in the hierarchy. A result of this change, is the fact that accountability has tended to take a higher place than performance in which the civil service once took pride. In spite of these limitations the author concludes that the administrative service has performed "remarkably well" in maintaining national unity. ... 39

The yawning gulf between various classes of public services is to be effectively bridged. This fact has been brought to Government's notice by almost all the Pay Commissions, appointed so far, but no remedial measures have yet been taken. The Second Pay Commission observes:

39. Ram K. Vepa, "Civil Service: The Human Angle", The Hindustan Times (New Delhi), March 28, 1970.

While all first appointments to Class I Services/Posts are made by the President, lower authorities are empowered to make such appointments in other cases; all posts in class I, and the bulk of the posts in Class II, are gazetted, but others are not; the President is the disciplinary authority for class I, and the appellate authority for class II; the disciplinary and appellate authorities for class III and class IV are mostly heads of departments or officers working under them; and while direct recruitment to all class I and class II Services/Posts is made in consultation with the Union Public Service Commissions (unless they are specifically excluded), there is no such general rule in regard to class III and class IV Services. 40

The present classification system is faulty in no more than one respect. It has led to considerable heart-burning among public services leading to inefficiency and has failed to serve as an instrument for handling the various cases of personnel management. The present system 'serves no practical purpose which cannot be served without it, on the other hand, it has an unhealthy psychological effect'.⁴¹ A new classification system incorporating therein recommendations of the Second Pay Commission be adopted. A feeling has to be inculcated in public services that they belong to a common public service.⁴²

The Ministry of Home Affairs introduced certain changes in regard to the service conditions of the public services. The Central Civil Services (Temporary Service) Rules, 1965, which regulate the conditions of service of temporary Government servants, have replaced the Central Civil Services (Temporary Service) Rules, 1949. The new rules provide inter alia for payment of gratuity to the families of

40. Second Pay Commission (1957-59), p. 561.

41. Ibid., p. 562.

42. The Second Pay Commission recommended, besides other things, amendments to the CCS (Classification, Control and Appeal), Rules, 1957.

the temporary and quasi-permanent Government Servants who die while in service, after having put in one or three years' service respectively. Provision has also been made for payment of terminal gratuity to the temporary Government servants who at the time of retirement, discharge or invalidment, have completed not less than 5 years' continuous service ... at the rate of one third of a month's pay for each completed year of service and to quasi-permanent employees at the rate of half-month's pay for each completed year of quasi-permanent service. Unlike the earlier rules, the new rules provide that, if sufficient grounds exist cases involving termination of service under Rule 5 may be reviewed by the competent authority even after the prescribed period of three months from the date of termination of service.⁴³ Similar adjustments in the existing pension codes, which are roughly hundred years old, are desirable. Care should be taken to see that no public servant, after retirement leads a life of privation in a welfare state. Much remains to be done to ameliorate the living conditions and to strike a just balance between cost of living and the spiralling prices. It is reported very often, very appalling indeed, that pensions are often made available after the death of the concerned employee, for which there is no apparent reason except red-tape. It is to be remembered that justice delayed is justice denied.

In the context of the recommendation of the Santhanam Committee to impose a complete ban on private commercial employment of retired Government servants for a period of two years after their retirement,

43. Annual Report of the Ministry of Home Affairs (Government of India, New Delhi), 1965-66, p. 7.

Government have decided that the present practice of considering each case on merits should be more vigorously followed especially in the case of senior officers. It has therefore been provided that the requests of the retired Class I officers, who draw a salary of Rs. 1500 per month and above at the time of their retirement, for permission to take up private commercial employment within two years after retirement should be considered by a Committee of the Minister-in-charge of the Ministry/Department under which the applicant served last prior to his retirement, and the then Home Minister. Cases of other officers can be disposed of by the administrative Ministries themselves, but, even in their cases, orders of the Minister-in-charge should be obtained before granting or refusing permission. Any commercial employment involving contact or liaison work with Government will be ⁴⁴looked upon with disfavour.

On October 5, 1963 Article 311 (2) of the Constitution was amended by the Constitution Amendment Act, 1963. The amended article provides that no person who is a member of the civil service of the Union or an all-India service or holds a civil post under the Union or State civil service of a State shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against and where it is proposed, after such enquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such enquiry. The effect of the amendment is that instead of having two full-fledged opportunities of defence, one at the time the charges

44. Ibid.

are made and the other at the time when the penalty is proposed to be imposed, the accused Government servant can only make a representation against the penalty proposed to be imposed upon him on the basis of evidence already adduced during the enquiry into the charges against him, without bringing any fresh evidence or other extraneous matters. The intention is to expedite the conduct of disciplinary proceedings.⁴⁵ Again on the recommendation of the Santhanam Committee regarding the grant of extension and or re-employment, the officers character roll and personal file should be carefully scrutinised and all other relevant information that may be available should be taken into account to judge whether the officer had good reputation for integrity and honesty and before the extension/re-employment is actually granted, the authority competent to grant extension/re-employment should record a certificate about the good reputation of the officer for integrity and honesty.⁴⁶

The Home Ministry also accepted the recommendation made by the Santhanam Committee that prosecution should be the general rule in all those cases which are found fit to be sent to court after investigation and in which the offences are of bribery, corruption or other criminal misconduct, involving loss of substantial public funds. In such cases departmental action should not precede prosecution. In other cases involving less serious offences or malpractices of a departmental nature, departmental action should only be taken and the question of prosecution should generally not arise. Whenever, however, there is unresolved difference of opinion

45. Annual Report of the Ministry of Home Affairs 1964-65, p. 6.

46. Ibid., pp. 6-7.

Ministries including the attached and subordinate offices in Delhi; the Central Secretariat Boards for different games and sports, drama, music, etc.⁴⁹ Similarly Staff Councils have been formed in each Ministry and its attached and subordinate offices. The Councils are advisory bodies. All matters relating to conditions under which the members of the Staff are required to work, general principles relating to conditions of service, the welfare of the members of staff; the conditions necessary for improving efficiency and standards are generally considered. These Councils afford a means of bringing the employer and the employee into regular conference, with a better understanding of each other's point of view and a consequent facility⁵⁰ for amicably adjusting questions at issue.

All the above measures for improving the morale of public services would be a mere moonshine, if the political leadership, the Ministers, do not provide the necessary drive to public servants. A tolerant attitude and a habit of give and take vis-a-vis the public servants is pathetically lacking in the present leadership. Political ideology, party politics, rivalries and cliques should not be brought in the administration. Healthy traditions are yet to be evolved regarding the Ministry-Secretary relations, which constitute the nexus of administration in a parliamentary system of government. A detailed code of behaviour for Ministers vis-a-vis their secretaries may perhaps be able to infuse cordiality between the two. The absence of clear-cut personnel planning and the consequent inability of the civil servants to deliver goods represents administrative incompetence.

49. Annual Report of the Ministry of Home Affairs 1959-60, p. 15.

50. Annual Report of the Ministry of Home Affairs 1958-59, pp. 14-15.

An unfortunate tendency had been fast developing among Ministers to expect obedience from civil servants and at the same time they are awefully ignorant of their obligations. This is a dangerous tendency. The civil servants may have and do have their drawbacks but it is in no way desirable on the part of Ministers to pillory them. One of the reasons for lack of sense of dedication and commitment among public service to the goals with which country's future is linked, is the absence of political support. A spirit of commitment and a sense of dedication can never be created in the public services by constitutional provisions or statutory laws. It ought to be developed piece-meal by extending greater support from political leadership and by paying due attention to their pay, pension and other benefits. The public service would prove to be a total misfit if its position is constantly undermined by various forces, political and otherwise. As has been rightly observed by A.D. Gorbala:

The collector who agrees to decide matters according to the wishes of the President of the District Congress Committee rather than to exercise his own judgement, the Secretary who writes a note to please a powerful politician, a close friend of the minister or a rich financier, however much they and those in authority above them think otherwise, these are not public servants. They serve not the public but an individual, a section, an interest. The conversion of all Government servants into true public servants is not an impracticable goal. 51

Perhaps keeping this in view, the Estimates Committee had to observe:

While the Committee endorse the forthright view expressed by the then Home Minister regarding the desirability of granting complete freedom to government officers to express their differing views, they would also like government to act in the capacity of loco-parentis to the public services and shield them against all unjustified attacks from whichever source they are

51. A.D. Gorbala, On Matters Administrative (Bombay, Popular Book, 1958), p. 43.

launched. In the opinion of the Committee, nothing can weaken the morale of the public services than a general feeling that in a certain set of circumstances they may be subject to harassing enquiries with no prospect of any protection from any quarter, for whatever they might have done in good faith. 52

The human element in public services which constitute the king-pin of the entire administrative structure, is to be given its due. The present mode of training has promoted actively compartmentalised departmental thinking among public services. Many a secretaries are as ~~much~~ ignorant of the affairs of other departments as the ladies at the Court of Versailles were virgins. Many secretaries especially in the high-ups do not care to study the rules and procedures pertaining to their own departments. They solely depend on their subordinates. A dynamic approach towards minimising departmental outlook is needed. These things are to be tackled from the human angle and not from the point of view of a police constable or a gutter inspector. The unfortunate tendency on the part of the Ministry of Home Affairs is that it sees at problems in the same way as it looks at the problems of law and order through the Intelligence's glasses. Such a tendency has to be shed away.

Corruption in Administration

A Persian proverb says that if a king takes a grain of salt from his subjects without payment his officers will rob the people of their entire possessions. The result is that today nothing can be got done unless some payment is made or there is a note of recommendation from those in political power or those who can influence them. The widespread corruption has led to inefficiency in the administration and to inordinate delays in the transactions

of business.⁵³ This statement contains substantial truth. Corruption pervades the entire hierarchy, administrative and political. It is the decisive factor not only with politicians but also with civil servants. The Vivian Bose Report is replete with examples of corrupt practices prevailing in the Government and the semi-Government circles.

Corruption as defined in the Indian Penal Code is: "Whoever being or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or forbearing to show in the exercise of his official positions, favour or disfavour to any person or for rendering and attempting to render any service or disservice to any person with the central or any State Government or Parliament or the legislature of any state or with any public servant as such."⁵⁴

Corruption is omnipresent. There is hardly any nook or corner which is left untouched by this canker of corruption. The Railway Corruption Committee headed by J.B. Kripalani had to painfully observe:

It had become such a convention to bribe the Railway Staff for obtaining Wagon space that an official of a Sugar Mill had issued written instructions to his staff regarding the rate of payment to the railway officials for loading their supplies. He was reported to have laid down that the station master, the guard and the engine driver should be paid 75 paise, 19 paise, 12 paise respectively for every wagon loaded.⁵⁵

53. J.B. Kripalani, "Deep Roots", Seminar (New Delhi), No. 8, April 1960, p. 26.

54. Indian Penal Code, Section 161.

55. quoted Surendranath Dwivedy and others, Political Corruption in India (Popular Book, New Delhi, 1967), p. 3.

In a Parliamentary Democracy it is the Minister who holds the key to administration. If there is widespread corruption, naturally somebody must be corrupt. It is for the Cabinet and the Ministry of Home Affairs in particular to find out the culprits. The Ministry has at its disposal innumerable channels of information through which facts can be easily collected. The civil servants do not have free access to these sources. But when the Ministers of Cabinet rank themselves are a party to such malpractices, directly or indirectly, the rate of corruption at administrative level is more than obvious. Administrative corruption get proper nourishment from political corruption. The ethical standards of our Ministers are far from satisfactory. Besides the constant liaison of some of the leaders at the helm of affairs with businessmen and industrial magnates is largely responsible for mounting corruption. The case of Sardar Pratap Singh Kairon is a glaring example. Commenting on the Kairon episode, the Das Commission report says:

According to them Sardar Pratap Singh Kairon has brought the State of Punjab to the verge of ruin by his systematic maladministration, the unabashed use of his official position and power to derive pecuniary gains for himself, the members of his family and relations, compensidously called 'the Kairon tribe'. 56

Corruption and bribery have become more or less a regular feature with the Police Force. The Bihar Police Commission Report, for instance, provides:

There is complete unanimity among the witnesses on the point that corruption exists in the Police and judged by its traditional and historical background, it survives as an inveterate disease defying all administrative measures that have been adopted from time to time to tackle this problem. A well-informed

56. Report of the Commission of Inquiry (Chairman S.R. Das), (Ministry of Home Affairs, New Delhi), 1964, p. 27.

and enlightened witness who has done some research in this regard favoured the Commission with his views. According to him, any force like the Police could be divided into two sections. The first section can be easily called the 'decision apparatus' and the other is 'submission or procedural apparatus'. While the former takes the decision the latter attends to procedure and is responsible for its execution. He thinks that there is far more corruption in the execution apparatus than the decision apparatus. This is the type of Evidence laid before the Commission by a very large number of witnesses. 57

58

In the case of State v. Mohammed Naim, the Allahabad High Court speaking through Justice A.N. Mulla observed;

If I had felt that with my lone efforts I could have cleared this Angean stable which is the Police force, I would not have hesitated to wage this war single-handed. There is no single lawless group in the whole country whose record of crimes comes anywhere near the record of that single organised unit, which is known as the Indian Police Force.

Even Pandit Jawaharlal Nehru, a leader of great eminence and statesmanship, could not do much to wipe out the evil of corruption and on the contrary he had "also thrown his weight against political action to unearth and eliminate corruption. Whenever a charge of corruption was levelled against a politician, Nehru had the habit of going into the motives of the accusers. For instance when several Congress MPs had taken exception to V.K. Krishna Menon's handling of the Jeep transactions (better known as the Jeep Scandal), the former Prime Minister's reaction was that a section of the party old guard was up in arms against Menon, because of his radicalism. So he ignored the findings of the Public Accounts Committee and refused to institute an enquiry into the charges. ... Similarly, the fact that an opposition leader, Surendra Nath Dwivedy, had brought to light the

57. Civic Affairs (Kanpur), April 1962, p. 16.

58. Criminal Miscellaneous Case No. 87.

Serajuddin Deals and K.D. Malaviya's role in them made the former Prime Minister adopt an attitude of partiality towards the accused. He was reluctant to let a judge investigate the matter unless his hands were forced. Even then, he had ensured that the enquiry was in camera and the Judge's findings which might have shed a lot of lurid light on Malaviya's record as Minister were kept secret. Taking advantage of Nehru's attitude Malaviya's supporters introduced the red-herring of socialism into what was simply a case of public honesty. They said that the Western Oil Companies and the 'vested interest' who are aggrieved by Malaviya's 'socialist' policies were behind the campaign. ... Even granting that the 'vested interests' would have welcomed Malaviya's exit as Minister for Mines and Fuel, the best way to counter them would have been to separate the impugned material record of Malaviya from his policies which, after all, were the policies of the Government. By clubbing the two Nehru had unwittingly brought into disrepute Malaviya's unexceptionable policy of the state exploring and developing the country's oil and mineral resources. Even the staunchest defender of Malaviya would not argue that a socialist policy of mineral development would have to go hand in hand with shady financial dealings with a businessman.⁵⁹ This is not the way to fight corruption.

In regard to the Jeep transactions, the then Home Minister had the audacity to tell the opposition benches in Parliament to make it an election issue and defeat the Ruling Party at the polls on this count. Behind the argument lay the fallacious view that once voted to power the ruling party and its members were free to indulge in dishonest ways. Even if corruption were made a pointed election

59. Surendranath Dwivedy and others, op. cit., pp. 15-16.

issue, the quality of the electorate and the several tangible and intangible factors which go to make an election campaign ruled out a clear-cut popular verdict. If a person accused of corruption is elected, does it mean that he is innocent, or that his constituents have a flair for a corrupt spokesman in the legislature.⁶⁰ Another facet of this attitude is the practice of outgoing Ministers running down corruption in the administration of which they had been a part earlier. A recent instance of this kind was the statement of G.L. Nanda after his resignation as Union Home Minister was accepted. Undoubtedly Nanda was very vehement in eradicating corruption, but when he met with opposition from leading members of his own party he lacked the nerve to pursue the drive. He led the Sadachar Samiti die an ignoble death, after it had been smothered by ridicule. He allowed the Cabinet sub-committee to whitewash the Orissa Affair even after the Central Bureau of Investigation, which was a limb of his own Ministry, had established a prima facie case of misuse of official position by the arraigned Congress leaders. ... Nanda complained that some of the leading lights of his party had always looked askance at his anti-corruption drive, implying thereby that they had brought his downfall on that account. One could persistently ask Nanda when he released it: If he had the courage of conviction and felt strongly that corruption should be weeded out of our public life, he could have made an issue of it and resigned in protest against political hurdles being placed in his path.⁶¹

60. Ibid., pp. 176-77.

61. Ibid., p. 177.

The reason for this widespread evil are varied and many. The gigantic expansion of state activities, planned economy and socialist pattern of society, opened new avenues for corruption. The quota-Permit Raj made the confusion worse confounded. The decentralisation of power, without effective safeguards, with a view to building up democracy from grass roots has added to the influence of the politicians especially the provincial ones. The various schemes of democratic decentralisation have failed to define clearly the position of politicians vis-a-vis the public servants. The cardinal principle of political non-interference in administrative affairs did receive a rude setback, which had a demoralising effect on public services. The local MLAs and the presidents of various local bodies by their manipulations of patronage have carried corruption to sinister proportions. The faulty and cumbersome procedures, rules and regulations is another equally great factor adding to corruption. The anxiety to avoid delay has encouraged the growth of dishonest practices like speed money. "Speed money" is reported to have become a fairly common type of corrupt practice particularly in matters relating to grant of licences, permits, etc. Generally the bribe giver does not wish, in these cases, to get anything done unlawfully, but wants to speed up the process of the movement of files and communications relating to decisions. Certain sections of the staff concerned are reported to have got into the habit of not doing anything in the matter till they are suitably persuaded. It was stated by a secretary that even after an order has been passed, the fact of passing such order is not communicated to the person concerned, and the order itself is kept back till the unfortunate applicant has paid appropriate gratification to the subordinate

concerned. Besides being a most objectionable practice, this custom of speed money has become one of the most serious causes of delay and inefficiency.⁶²

Another equally awfully great factor for the mounting corruption is that many a provision relating to Public Services are insufficient. The rules issued under the All India Services Act 1951 had left out many vital matters. For instance "no rule made it clear that every Government servant is responsible for his actions except when he acts under the directions of his official superior. (The lacuna was fully made use of by the officers concerned in the disciplinary proceedings arising out of the Life Insurance Corporation transactions of purchase of shares from Haridas Mundhra). There was no clear specification of the conduct expected of a Government servant in the event of conflict between public duty and his private interest, though some of the points are implied but left unsaid."⁶³ Disciplinary rules need to be suitably amended. The dilatory procedure that is being followed of the right to be informed of the charges, the right to appeal etc. need a thorough scrutiny to avoid delay in taking action against public servants found guilty of malpractices. Necessary changes are also desirable in the Penal Code, supplementing the offences mentioned therein with new ones, so as to include all social offences in the criminal law of the country. As this task involves legal acumen, it can be assigned to an expert (legal) committee.⁶⁴

62. K. Santhanam, Report of the Committee on Prevention of Corruption (Ministry of Home Affairs, Government of India, New Delhi), pp. 9-10.

63. Ibid., p. 26.

64. Ibid., p. 123.

Even a slight leniency on the part of Government is sufficient to bring corruption, in one way or the other, in the limelight. For instance, Civil servants serving in cities get advances from banks or Government for building houses. Government does not insist on the officers staying in these houses. The result is that they continue to occupy Government quarters at low rents and let out their houses on high rents. A flat in Bombay constructed on land obtained at concessional rates from the Government is let out on a four figure rent to a Public Sector Undertaking (The Bombay State Electricity Board). Decisions taken in this regard by Central Government and State Governments are not uniform.⁶⁵

An independent and impartial press can be a good weapon to combat corruption. Widespread publicity to cases of corruption where high officials not excluding Ministers is bound to produce encouraging results. The fear of losing public confidence and the stigma attaching to their reputation would go a long way towards creating a healthy political atmosphere in the country, which will definitely ensure administrative stability to a large extent. This, however, does not in any way condone the malicious journalists, planting charges and framing stories against public servants, with the intention of character assassination to meet their nefarious ends. The press be given considerable laxity within limits to expose corrupt officials and gather public opinion on it. A squeamish approach towards the press is in no way desirable. Sound policies and healthy traditions are yet to be evolved by the Home Ministry towards the press.

65. Report of the Administrative Reforms Commission on Promotion Policies, Conduct Rules, Discipline and Morale, p. 136.

Independence of judiciary is indispensable for democracy.

This ought to be the case with all law courts, from the lowest levels of judiciary right up to the supreme court. K. Santhanam desperately observes; "Corruption exists in the lower ranks of the judiciary all over India and in some places it has spread the higher ranks also." In this context he suggests "the Chief Justice of India in consultation with the Chief Justices of the High Courts should arrange for a thorough enquiry into the incidence of corruption among the judiciary, and evolve, in consultation with the Central and State Governments, proper measures to prevent and eliminate it. Perhaps the setting up of vigilance organisation under the direct control of the Chief Justice of every High Court co-ordinated by a Central Vigilance Officer under the Chief Justice of India may prove to be an appropriate method." ⁶⁶

The increasing centralisation of anti-corruption work in the Home Ministry of the Union and the State Governments is not regarded as a healthy portent for the future. When the Special Police Establishment was created, it was deliberately kept outside the control of the Home Department, although its principal function was to investigate charges against civil officers and non-officials. ... The new system of forming Boards of Enquiry leads to a further centralisation of work in the hands of the Home Ministry. The arrangement is lopsided, although the Home Ministry has the general responsibility for the good conduct of the Government servants while corruption is strictly a matter for the administrative Ministry concerned. The centralisation of anti-corruption work in the Home

66. K. Santhanam, op. cit., pp. 108-9.

Ministry causes a dilemma. If effective action is taken it may bring to light too many malpractices which in turn may shake the confidence of the Legislature in the Ministry's ability to superintend the conduct of Government servants in general. Ineffective proceedings and a laxity in pursuing police investigations to their logical conclusion may be in the long run encourage more corruption, with its consequent complications on the law and order position, for which the Home Minister is responsible primarily.⁶⁷ Parliament can also play an effective role in eradicating corrupt practices from administration in general. When serious charges, duly substantiated by facts and figures, corruption and gerrymandering, are levelled against persons holding key positions in Government or Administration, there should be no vacillation in appointing parliamentary committees to investigate the matter and find out the facts.

In view of the inadequacy of the present system of appeals within the departments, many notable jurists and statesmen⁶⁸ not excluding the Law Commission⁶⁹ suggested for the setting up of a special tribunal corresponding to the British Council on Tribunals. The Administrative Reforms Commission suggested for constituting disciplinary tribunals to conduct enquiries against Government servants. Whole time officers trained and experienced in conducting judicial proceedings should be appointed for holding departmental

67. P.C. Chaudhuri, "Corruption: The Problem", Seminar, No. 8, April 1960, pp. 21-22.

68. See N.A. Palkhivala, "The Income Tax Tribunal", The Times of India (New Delhi), June 28, 1964; P.B. Gajendragadkar, Indian Journal of Public Administration, Vol. IX, No. 4, October-December 1963, p. 599.

69. Report of the Law Commission on Reform of Judicial Administration, Part 2, pp. 691-93.

enquiries. So long as Lokpal and Lokayuktas have not been appointed, the members of the disciplinary tribunals should be directly under the vigilance commissioners in the States and Chief Vigilance Commissioner at the Centre for administrative purposes. After the appointment of Lokayuktas and Lokpal they will be under Lokyuktas and Lokpal.⁷⁰ These suggestions, as usual, have largely remained *on* paper on which they were written. Corruption also did not diminish. At present the need is for a permanent machinery to investigate and report on malpractices rampant in administration. An occasional Das Commission or a Santhanam Committee is no remedy for the increasing evil of corruption. Corruption, owing to its complex nature has to be attended to from various angles, political, economic and social. An independent machinery is one remedy for this. As a matter of fact, the awareness for such a machinery is there in India. In July 1959, for the first time, C.D. Deshmukh, the then Chairman of the University Grants Commission, raised the issue in the course of a public lecture in Madras.⁷¹ Since then the idea of setting up of an Ombudsman began gaining momentum. In August, 1962, a group of lawyers at the Third All India Law Conference held in Delhi also emphasised the need for such a body. The Committee on Ombudsman declared;

The Committee having considered the various aspects of the subject placed before it by its members, of the actual operation on a part of Indian soil of the Procurator-General of Pondicherry, having in view the area, population and size of the Civil Service

70. Report of the Administrative Reforms Commission on Promotion Policies, Conduct Rules, Discipline and Morale, para 18(2).

71. See Keesing's Contemporary Archives 1960, p. 17506.

of India, and having noted that no comprehensive enquiry into the control of powers has taken place in India, considers the early establishment of an appropriate body to go into the entire question of the machinery of control, over administrative action a necessity. 72

The reaction of the Home Ministry was far from encouraging. It was, however, reported⁷³ that the then Home Minister, G.L. Nanda, in fact, wanted to have an institution like an Ombudsman but the reactions of the bureaucrats of his Ministry were quite contrary to such an institution. The bureaucrats believed that it is obviously vital that the Ombudsman should keep totally out of political controversies. This may not be possible, in their opinion, in the country at the present stage.⁷⁴ This implies the absence of determination to eradicate corruption, political and administrative.

It is needless to say that we have a plethora of rules, regulations and codes to combat corruption at different levels of administration. What is, however, lacking, is a comprehensive agency to tackle corruption and official highhandedness. In view of the fact that the procedures of law courts are tardy and dilatory, the need for such an organisation is still greater, to supervise the actions and decisions of administration vis-a-vis the citizens.

An Evaluation

It has already been brought out that efficiency and integrity of administration is bound up with the question of integrity at political levels. It has also been shown that if there is any minor corruption (of whatever brand it might be) at the higher levels, it

72. Quoted by M.C. Setalvad, "The Ombudsman", Journal of National Academy of Administration (Mussoorie), April 1963, pp. 8-9.

73. The Statesman (Calcutta), October 20, 1965.

74. The Hindu (Madras), October 27, 1965.

Will be reflected in a thousand times bigger way at lower levels. Today, the general feeling in public service is that honest work does not pay. Since the majority is busy currying favour with the bosses, the few that seek to carry on their work unconcerned about any favour, appear arrogant in the eyes of their seniors and seldom get promotion. What is worse it is the Gresham's Law of the bad coins driving away the good coins that is in vigorous operation in public service. When unworthies are placed above, those who have any sense of dignity have to quietly withdraw. Many people cannot do even that. In these days of acute unemployment since finding a suitable job has become ever so difficult, many of the moral men who work in this kind of set up have generally given way, sooner or later, under agonising pressures of legitimate ambition which can only be achieved through illegitimate means. Unless this rot is stemmed, all talk of efficiency and purpose-orientation of administration will be empty phrases. And to stem it, the lead has to come from the top.⁷⁵

It is an irony of history that despite twenty-three years of independence the legacy of the police state still dominates the Indian administrative scene. The role of Public Servants is totally different in a welfare state from that of a police state. Their role is not merely of a watch-dog but of a friend, guide and philosopher of the citizens. Most of the public servants in the high ups are busy in satisfying their superiors than in the betterment of the lot of teeming masses. That is bound to create a demoralising effect in the long run. The public servants shall shed

75. Sailen Ghosh, "Pre-conditions", Seminar, No. 85, September 1966, pp. 42-43.

away the bureaucratic attitude which is in no way congenial in the context of a welfare state. N. Bhalerao has put it;

The Indian public services are characterised by various *dysfunctional* and pathological features. The more important among these maladies are their subjection to politics and casteism, class spirit, impersonality, inflexibility, a general tendency to avoid responsibility, loss of individuality and initiative, lack of sound morale, corruption and delay. Although these defects of the Indian bureaucracy are attributable to the nature of Indian society, politics and government, they are also partly due to inferior personnel practices. The raising of personnel standards and practices can to a great extent, increase the effectiveness of administrative operations. A study of the personnel practices and standards followed in the Government of India shows that they are far from satisfactory, inadequate salaries and promotional opportunities, lack of communication and the existence of a wide gap between the higher and the lower levels of administration, inadequate incentives for improving performances, lack of participation of the employees in deciding the conditions of service which affect them and lack of training facilities for developing the potentialities of subordinate employees are some of the features of the personnel practices followed in India. Personnel management has not become a dynamic movement in India as it is in other countries like the United States. The result is the general ineffectiveness of Public Administration. 76

Inefficiency and jobbery in administration is largely owing to the low quality of the personnel. "The substitution of the ICS by IAS after independence, with recruitment from local universities an admirable reaction to the colonial era, but it has had a telling effect on the quality of the bureaucracy. There are, no doubt, some members of the IAS who are even superior to the ICS, but these are cases where individual intelligence and capability outshine academic education and training. A large number of IAS of today

76. N. Bhalerao, Public Service Commission of India (Sterling Publishers, Delhi, 1966), pp. XXIV-V.

would be rejected by any good private sector organisation or commercial firm in a competitive selection. It is unfortunate that the government should have lowered the standards of selection also and thrown the services open to third class graduates. The weightage given on the basis of caste and regional considerations has also contributed to the perpetuation of narrow-mindedness, parochialism, ignorance and inefficiency.⁷⁷ The civil service can never become an effective tool of social and economic change so long as it is not trained in modern concepts of growth, socialism, business methods and managerial techniques on the one hand, and so long as appropriate instructions are not developed as action agencies in the economy on the other. If these aspects receive the consideration they deserve, many of the top civil servants would probably be operating through institutions and action agencies rather than pulling wires from Delhi Secretariat.⁷⁸ What is, therefore, needed is a long-range planning of the entire structure of Public Services, recruitment, training and promotion. Planning, however, does not mean a mere expansion in the various cadres of the services but an expansion in consonance with the requirements of the State. It should also aim at creating a pool of public services for future needs.

The reservation of seats in public services runs contrary to the democratic principle of the right to equality. Irrespective of the justification for the incorporation of the provisions pertaining to it in the Constitution, it is high time to bring about suitable

77. D.R. Rangnekar, "Indian Civil Service: The Reality", Seminar, No. 84, August 1966, p. 28.

78. Ibid., p. 30.

amendments or to delete them altogether. At the time of Constitution-making, some concessions were considered necessary to people belonging to Scheduled Castes and Backward Tribes owing to their economic conditions and illiteracy. But these concessions ought not to have continued for generations. So far as their poverty is concerned, the Government may help them by way of scholarships, loans, etc. during their period of study or training, but reservation of seats in public services should be discontinued. As a result of these reservations, there is a hectic race among people to get themselves enrolled in the list of backward classes so that they may get an upper hand in being selected to various public services. This has opened up new avenues of corruption and bribery.

There are more specific difficulties in the personnel field. Admittedly there must be reasonable degree of consistency in pay standards, and therefore in grades of position to be filled; there must be some consistency in work loads so that one agency does not have many officials to handle a relatively small programme while another with a programme of similar size has fewer officials; there must be some systematic method for certifying eligibility to appointment. Concerns such as those are at the very heart of the whole process of reference. But the concerns should not be excessive. Present practice imposed on Home Affairs and Public Service Commission have made for pettiness, unimaginativeness, inflexibility and a tempo in which a calendar has more relevance than a clock.⁷⁹

79. Paul H. Appleby, Re-Examination of India's Administrative System With Special Reference to Administration of Governments, Industrial and Commercial Enterprises, p. 24.

The number of personnel is small in the context of the increased activities of the state. Professor Appleby very rightly observes;

A great shortage of personnel sufficiently competent to fill the hundreds and hundreds of key positions necessary to effective government pursuing the goal of a Welfare State speedily attained. This scarcity means that the greatest costs of government are the true per hour costs of key personnel, not their salary costs. When key officials are so over-burdened that they delay hundred and thousands of other persons in getting on with action necessary to the achievement of agreed upon goals, the waste in the uneconomic use of their time is most incalculable. All the amenities which save their time should be provided in the interests of true economy. All of the provisions that prevent them time to read and reflect, all of the administrative arrangements that permit them to expand maximum energies on the exercise of judgements really essential to their responsibilities, and salary scales that will permit the filling in of hierarchies so that delegation may be maximised - these things are economical in the most important meaning of the word. 80

A sense of awareness on the part of public servants to the problems in the context of the Indian situation and the desire of building up of a welfare state is to be developed. A sense of urgency is also lacking in the public services. The recurring delays, the unavoidable red-tape is not always due to the absence of sound procedures and the necessary regulations but largely because of the leisurely way of doing things on the part of the public servants. The public servants in the higher echelons should make it a point to accelerate the pace and galvanise the entire staff in their respective departments. The leaders at the helm of affairs should also not adopt a rigid attitude towards public servants as that would mar their efficiency. Sardar Patel was respected by a

80. Ibid., pp. 26-27.

majority of civil servants not because he was one of the stalwarts of the ruling party but owing to his paternal approach to their problems. Commenting on the civil servants the late Sardar had observed:

I wish to assure you that I have worked with them during this difficult period. In speaking with a sense of heavy responsibility ... I must confess that in point of patriotism, in point of loyalty, in point of sincerity and in point of ability, you cannot have a substitute. ... I wish to place it on record that if during the last two or three years most of the services have not behaved patriotically and with loyalty, the union would have been collapsed. 81

Such an attitude ought to be adopted towards the public servants by the Ministers especially the Home Minister. He must act as their guardian and not as watchman, all the time finding fault with them. The Home Ministry has a special responsibility in that direction. The frequent agitations and unrest among public servants speak of the lapses on the part of the Ministry, such tendencies are to be uprooted and the failings and errors on the part of public servants should not be exaggerated to undue proportions nor should they be minimised as insignificant. Efforts should be made to remove them as and when they crop up without too much of fanfare.

81. Constituent Assembly Debates, October 18, 1949, pp. 48-49, 56.

CHAPTER IV
CENTRE-STATE RELATIONS AND THE MINISTRY OF
HOME AFFAIRS

The Ministry of Home Affairs has a responsibility to maintain contact with the states and co-ordinate inter-state activities and ensure concerted action when necessary.¹ In other words the Home Ministry is "an octopus whose tentacles hold India together. One tentacle helps the state government quell language riots in Assam while another probes a corrupt station Master in Kerala. If a maharaja packs his bag for Europe, if a deputation of tribesmen petitions for rice or if a High Court judge misbehaves, the Home Ministry's tentacles react almost immediately. ... The Home Minister has at his disposal fourteen armed battalions of the Central Reserve Police (CRP), the most effective force in India outside the military services. He is also assisted by the Intelligence Bureau (CBI) and the powerful Special Police Establishment (SPE) which have, respectively broad powers to investigate organised crime and corruption. The Ministry's political Department reports on every facet of Indian political life with special attention to communist activities".² The Home Ministry constitutes the kernel of the entire administration.

The Ministry till January 10, 1955 dealt with two subjects - Public Services and Public Security. With the merger of the Ministry of States with that of Home Affairs its functions increased considerably. The new responsibilities that have befallen on it

1. Annual Report of the Ministry of Home Affairs 1966-67, p. 111.

2. Welles Hangens, After Nehru Who? (Rupert Hart Davis, London), 1961, p. 115.

include: (i) administrative, financial and economic problems of Part B states; (ii) matters relating to Part C states of Bhopal, Himachal Pradesh, Vindhya Pradesh, Kutch, Manipur and Tripura; and (iii) matters arising out of the instrument of merger and covenants entered into between the Government of India and the Rulers of the former Indian states including the Privy Purses and settlement of private properties of Rulers and the allowances payable to the relatives of such rulers.³

The States Reorganisation Act, 1956 brought about a significant change in the entire set-up. The categorisation of states into three parts was discontinued and the entire Indian territory was divided into states and union territories, which were placed under the direction of the Home Ministry. With the passage of time the number of states had gone up. In May 1960, the bilingual State of Bombay was bifurcated into Maharashtra and Gujarat. In 1962 Nagaland attained separate statehood and was separated from Assam. In November 1966 the states of Haryana and Punjab were carved out of the former Punjab State. Dadra and Nagar Haveli were merged with India as Union Territory in August 1961. In 1962, Goa, Daman and Diu were liberated from the Portuguese and were merged with the Indian Union. Pondicherry was taken over as Union Territory in 1964 and the recent addition is that of Chandigarh. Meanwhile Dadra and Nagar Haveli were merged with the State of Maharashtra.

The Central Government has direct responsibility in regard to the administration of the Union territories and NEFA. The Ministries at the Centre are responsible for the administration of

3. Annual Report of the Ministry of Home Affairs 1955-56, p. 1.

the subjects assigned to them pertaining to these territories. The Home Ministry has an overall responsibility for the administration of Union territories. The entire work as far as NEFA is concerned is concentrated in the Ministry of Home Affairs.

The essence of Federalism lies in a written constitution, distribution of powers between Central Government and State Governments and a Federal judiciary, to adjudicate on inter-state or Centre-state disputes, if any. Judging by this criterion, India is a Federal State. Unlike the Indian States, the federating units in America were not politically connected with each other; the urge for a common central Government drove them towards establishing federal government in USA. In case of India, "the units constituting the federation were never independent States in any period of history and they had never been endowed with any specific powers of governance. The present size and their relation with the Central Government have been evolved through numerous methods of trial and error and these have ranged between formulae of centralism and decentralisation"⁴.

The idea of a federal state for the first time was visualised by the Simon Commission in its report (1930). It gained further momentum at the First Round Table Conference, where the delegates of the British India and the Princely States supported the cause of Federal Government. The British Government accepted in principle the demand for federal government mainly for two reasons; first, to satisfy the Muslims by granting regional autonomy to the provinces where they are in majority and secondly to integrate the different

4. S.C. Dash, The Constitution of India (Chaitanya, Allahabad), 1968, p. 11.

princely states with British India. But owing to Civil Disobedience Movement and mass disorder, the scheme could not be implemented. As a result a Second Round Table Conference was held. Ramsay MacDonald speaking at the final plenary session of the Conference said:

There is still difference of opinion, for instance, as to the composition and powers of the federal legislature, and I regret that owing to the absence of a settlement of the key questions as to how to safeguard the minorities under a responsible central government, the conference was unable to discuss effectively the nature of the federal executive and its relationship with the Legislature. Again it has not yet been possible for the States to settle amongst themselves their place in the Federation and their mutual relationships within it. ... Further thought, discussion and reconciliation are still required before we can translate broad general aims into detailed machinery of a workable Constitution. 5

The two conferences died their natural death. The Third Round Table Conference held in 1932 also proved to be futile as delegates of the Indian National Congress and the Labour Party were kept aside from the Conference. Thereafter the Government issued a White Paper in March 1933, which proposed responsible governments in the provinces and Dyarchy at the Centre. A Joint Select Committee of both Houses of Parliament was constituted by His Majesty's Government in 1933 to scrutinise the proposals put forward by the White Paper. The recommendations of the Committee were enacted and given assent to by the Crown and ultimately they became the basis of the Government of India Act, 1935.

The Government of India Act 1935 could not be implemented fully owing to non-participation of states and outright rejection of the Act by the Indian National Congress and the Muslim League. The

5. Final Plenary Session, Second Round Table Conference (Second Session), Proceedings, pp. 415-16.

Muslim League rejected it as "fundamentally bad, ... most reactionary, retrograde, injurious and fatal to the vital interests of British India"⁶. The Congress condemned the Act as a design "to facilitate and perpetuate the domination and exploitation of the people of India"⁷. The outbreak of the second World War became an equally great obstacle in the implementation of the Act. Despite these handicaps autonomous provinces were created and made the provincial government independent of the Central Government. A Federal Court was also set up under the Act. The powers of the Governor-General were enlarged. Powers were divided between the Central Government and state governments in three lists. Then came the Cabinet Mission in 1946 which laid down a plan for the future constitution of India to be drawn up for the Constituent Assembly. It provided for a very feeble centre; whose jurisdiction was restricted to defence, foreign affairs and communication and powers for raising necessary funds. Residuary powers were left to the provinces. The provinces were to form themselves in various group governments and share power among themselves. "In this three-tier administration thus envisaged, the Federation was to have either three components in the form of three Groups or as many units as there were provinces and Native States willing to participate in the federation. From the Act of 1935, it was clearly accepted that the Federal Centre would not have co-equal jurisdiction in respect of all the component units; the Provinces were to be under the control of the centre in regard to all items enumerated in the Federal List, whereas control over the acceding

6. All-India Muslim League Resolutions 1924-36, pp. 6-7.

7. All-India National Congress Resolutions 1934-36 (Allahabad), p. 77.

Indian States would be limited to the items specified in the Instrument of Accession signed and executed by the Rulers of those states. ... Consistent with the Cabinet Mission Plan, the Constituent Assembly had set up a Union Powers Committee for the purpose of preparing the basic principles for distribution of powers. It was understood that the principles devised would conform to the needs of a very weak centre. But before the committee had submitted their recommendations, partition of India took place and the Constituent Assembly was given the freedom of drawing up a Constitution which could meet the requirements of the New India. Partition has also achieved the beneficent results of hastening the accession of the Indian States to the Union; their representatives joined the Assembly and participated in the codification of the Constitution with the full knowledge that the document would be applicable to them also. While the Assembly was going through the painstaking and elaborate labours, the picture of the Indian States was changed beyond recognition. The Rulers, one and all, handed over their right to administration to the Government of India and in return got some of the rights and privileges in respect of the grant of a Privy Purse, succession to the Throne and personal status recognised and accepted through agreements signed by the Government of India individually with all of them.⁸ Special privileges were accorded to the Princes under Articles 291, 362 and 363 of the Constitution of India's Republic.

8. S.C. Dash, op. cit., pp. 148-49.

Constitutional Provisions Governing Centre-State Relations

There was a difficult task before the Constituent Assembly in regard to the future set up of the Constitution. Opinions varied from one extreme to another — some favouring a strong Centre while others pleading for strong units and a weak Centre. After prolonged discussions, the pendulum finally swung in favour of federal government with a strong Centre. The idea underlying it, as has been beautifully put, 'India is a new Nation but has a very old, rather ancient civilisation. She is also a large state, as large as Europe excluding Russia. She has at the same time been a melting pot of races and religions, languages and culture; as a well-known anthropologist observed, the sub-continent of India 'has been linked to a deep net into which various races and people of Asia have drifted and been caught'. History and geography have, however, conspired to create all possible kinds of differences and inculcate and foster the growth of sectional loyalties. The Constituent Assembly opted for the adoption of a federal framework as the federal principle provides an ideal compromise between centrifugal forces.⁹ Nehru also pleaded for a strong centre. He observed in the Assembly;

We are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which could be incapable of ensuring peace, of co-ordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere. At the same time, we are quite clear in our minds that there are many matters in which authority must be solely with

9. S.A.H. Haqqi, (ed.), 'Introduction', Union-State Relations in India (Meenkaashi, Meerut, 1967), p. 3.

the Units and that to frame a constitution on the basis of a unitary State would be a retrograde step, both politically and administratively. 10

After having agreed to have a Centre with over-riding powers, the Constituent Assembly accordingly drafted the Constitution making ample provisions for strengthening the Centre. The Constitution provides for three lists, Union List, consisting of items where the Centre alone can make legislation; State List, consisting of items solely assigned to States and Concurrent List where both the Centre and States have the right to make concurrent legislation. The residuary powers were vested with the Centre. If one looks at these three lists, one finds that major items were allotted to the Centre and the states were reduced to an insignificant position. The following discussion is an attempt to examine the federal structure in the light of the constitutional provisions and the role of the Ministry of Home Affairs in keeping up the balance between the Centre and States. The discussion does not include the financial aspects of the federation as it is outside the purview of the Ministry.

Article 249 of the Constitution provides; (i) if the Council of State has declared by resolution by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force; (ii) a resolution

10. Constituent Assembly Debates, Vol. V, No. 3, August 20, 1947.

passed under clause (i) shall remain in force for such period not exceeding one year or may be specified therein provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (i), such resolution shall continue in force for a further period of one year from the date on which it would otherwise have ceased to be in force; (iii) a law made by Parliament which Parliament would not but for the passing of a resolution under clause (i) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.¹¹

Article 250 states: (i) Notwithstanding anything in this chapter, Parliament shall, while a proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List; (ii) a law made by Parliament which Parliament would not but for the issue of a proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.¹²

Article 251 provides: Notwithstanding in Articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this constitution it has power to make, but if

11. Constitution of India (1950).

12. Ibid.

any provision of law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by Parliament whether passed before or after the law made by the legislature of the State, shall prevail and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long as the law made by Parliament continues to have effect, be inoperative.¹³

Article 254 lays down; (i) if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of the State, or as the case may be, the existing law, shall prevail and the law made by the Legislature of the State, shall to the extent of the repugnancy, be void; (ii) where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that state; provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law

13. Ibid.

adding to amending, varying or repealing the law so made by the
Legislature of the State.¹⁴

Article 256 states; The Executive power of every state shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a state as may appear to the Government of India to be necessary for that purpose.¹⁵

Article 257 lays down: (1) The executive power of every state shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a state as may appear to the Government of India to be necessary for that purpose.¹⁶

Article 262 provides; (i) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-state river or river valley; (ii) notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other Court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (i).¹⁷

Article 263 provides; If at any time it appears to the President that the public interests would be served by the

14. Ibid.

15. Ibid.

16. Ibid.

17. Ibid.

establishment of a Council charged with the duty of (a) enquiring into and advising upon disputes which may have arisen between states; (b) investigating and discussing subjects in which some or all of the States or the Union and one or more of the states, have a common interest; or (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject, it shall be lawful for the President by order to establish such a Council and to define the nature of the duties to be performed by it and its organisation and procedure.¹⁸

Emergency Provisions

Besides the above provisions, to be applied in peace time, the Constitution also provides for emergency provisions. These provisions have been the focus of heated discussion in the Constituent Assembly for fear of its possible misuse by the executive authority. I shall first discuss the constitutional provisions governing union-state relations in emergencies.

Article 352 provides: (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened whether by war or external aggression or internal disturbance, he may by Proclamation, make a declaration to that effect. Clause (2) of the Article provides: "a Proclamation issued under clause (1) (a) may be revoked by subsequent Proclamation; (b) shall be laid before each house of Parliament; (c) shall cease to operate at the expiration of two

18. Ibid.

months unless before the expiration of that period it has been approved by resolution by both Houses of Parliament; provided that any such resolution is issued at a time when the House of the People has been dissolved or the dissolution of the House takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the Proclamation has been passed by the Council of States before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days, or resolution approving the proclamation has been also passed by the House of the People; (3) a Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof.¹⁹

Article 355 lays down: It shall be the duty of the Union to protect every State against external aggression or internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.²⁰

Article 356 of the Constitution provides: (1) If the President, on receipt of a report from the Governor of a state or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the

19. Ibid.

20. Ibid.

provisions of this Constitution, the President may by Proclamation; (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or anybody or authority in the State other than the Legislature of the State; (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament; (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions of this Constitution relating to anybody or authority in the State for suspending in whole or in part the operation of any provisions; Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Court; (11) any such Proclamation may be revoked by a subsequent Proclamation.²¹

Article 357 lays down; Whereby a proclamation issued under clause (1) of Article 356, it has been declared that the powers of the Legislature of the State shall be exercised by or under the authority of Parliament, it shall be competent (a) for parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf; (b) for Parliament, or for the President or other authority

21. Ibid.

in whom such power to make laws is vested under sub-clause (a), to make laws conferring powers and imposing duties, upon the Union or officers and authorities thereof; (c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.²²

Article 365 provides; Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution.²³

A Strong Centre

The provisions governing centre-state relations confirm beyond doubt that the makers of the Constitution clearly aimed at establishing a strong centre. "Tradition die hard. The federation of the Act of 1935 had been characterised by centralising tendencies; for a country which had nourished a sense of unity as a cherished doctrine of nationalism for more than a century could not all too soon be fractionalised with a consciousness of separatism. India is a conglomeration of races, religions, communities, castes and languages; these divisions transcend the artificial boundaries that the provinces and the states possess. Separatism on the basis of this political division could not therefore be constructive and

22. Ibid.

23. Ibid.

solid, on which alone federal structure rests. An Indian Federation is bound to be centralised and the Act of 1935 recognised it. The new Constitution of India could not tear away from the basic assumption of that still born federation. Immediate redrawing of the boundaries of the units for the purpose of creating rational units for a solid federation would have reawakened centrifugal tendencies lying dormant and created more problems than what such a step was likely to solve. Therefore the most desirable cause was to allow the old system to continue and as such the Indian federal union has an overdose of centralism.²⁴"

The holocaust caused by independence and the division of the sub-continent gave a further fillip towards establishing a strong centre. The various disintegrating forces, at the time of partition had to be tackled on a national basis, which only the Central Government could do effectively. The integration of Princely states and the adoption of Planning as the national goal further increased the powers of the Centre vis-a-vis the states. In view of all this, the Constitution of Indian Republic went far ahead of the 1935 Act in strengthening the Centre. For instance, items such as national highways and inter-state trade were under the provincial list under the Act of 1935; but these items became the central subjects under the new Constitution. The residuary powers were also added to the armoury of the Centre. "There was a big battle in the old days between the politicians about this issue of residuary powers. It was considered to be a test as to whether there should be a strong Centre or a weak Centre. It was imagined that any Centre which had

24. S.C. Dash, op. cit., pp. 150-1.

residuary powers would be strong and a Centre which had no residuary powers would be weak. I do not think the experience of the USA, where the residuary powers are with the states has justified all the controversy. In the Indian Constitution, where all the subjects are listed, the scope for residuary powers is limited and it is not a significant indication of inferiority that the states have no residuary powers while the centre has all the residuary powers."²⁵

Article 249 of the Constitution authorises the Council of States to transfer any or all the subjects mentioned in the State List to that of the Union List, provided it is supported by a two-thirds majority. The Council of States in no way represents the various federal units on an equal basis as is the case in the USA. The state of UP for instance, sends a contingent of 34 members to the Council of States against one by Assam. It is, therefore, obvious that a minority of states, by sheer accident of their majority in the House, can transfer the subject/subjects of the state list to the union list of a particular state. There is no such provision in any of the constitutions of the world. Even the Government of India Act, 1935, which reserved regulatory powers to the Centre did not make a provision corresponding to the present one (Article 249). Such mischievous provision is a deliberate "deviation from the basic principle of a federal Constitution that the federal legislature cannot transfer unto itself unilaterally powers reserved to the States in the Constitution".²⁶

25. K. Santhanam, Union-State Relations India (Asia Publishing House, New Delhi), pp. 9-10.

26. Asok Chanda, Federalism in India (George Allen & Unwin, London, 1966), p. 91.

By Articles 251 and 254 the states were deliberately made subordinate to the Centre. By these provisions, if a state with a party other than the Ruling Party at the Centre passes a law to which the Centre is opposed on political grounds, then Parliament can pass a law contrary to the state law, thereby making the state law null and void. Under Articles 256 and 257 the Centre can issue directions to states regarding construction and maintenance of means of communication declared in the direction to be of national or military importance. The Union can also issue directions to the states for the protection of railways. "While Railways are a union subject, 'police' including railway police is a state subject. Responsibility for the protection of railways thus devolves upon the states. But directions incidental to their protection have appropriately to emanate from the Union. It is only the Railway authority which can determine and co-ordinate its steps necessary from time to time for the protection of its property. As the cost of railway police is borne by the railway authority, the states are in a sense their agents, though the constitutional position is different."²⁷

The federal principle receives a jolt from Article 3 which provides: "Parliament may by law (a) form a new state by separation of territory from any state, or by uniting two or more states or parts of state or by uniting any territory to a part of any state; (b) increase the area of any state; (c) diminish the area of any state; (d) alter the boundaries of any state; (e) alter the name of any state..."²⁸ In taking action in this regard, Parliament may act

27. Ibid., p. 107.

28. K. Santhanam, op. cit., p. 6.

by a simple majority as legislation in this regard is not regarded as an amendment to the Constitution for purposes of Article 368.

The States Reorganisation Act, 1956, bears testimony to this.

Commenting on the Article K. Santhanam very cogently observes;

The fundamental principle that a federation depends upon the integrity of states seem to have been lost sight of. However sound the reason might have been for the incorporation of the said Article, now it is time to consider whether this provision should continue to be there as it is, whether for once the parliament should not seek an amendment of the Constitution to restrict its own powers, rather than extend it as it has been done in all the amendments of the Constitution which have taken place during the last two decades. 29

Article 200 provides that "when a bill has been passed by the Legislative Assembly of a state or, in the case of a state having a Legislative Council, has been passed by both Houses of the legislature of the state, it shall be presented to the Governor and the Governor shall declare either that he assents to the bill or that he withholds assent therefrom or that he reserves the bill for the consideration of the President". And Article 163(a) provides that "there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions"; and Article 164(2) provides that "the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State". The Governor is, therefore, a constitutional head and has to act on the advice of the State Cabinet. For instance if the Governor is asked by the Centre to reserve a bill for Presidential assent and the State Cabinet does not want the bill to be reserved for the Presidential assent, there is then a constitu-

29. Ibid.

tional deadlock. Take for instance the Kerala Education Bill. It dealt with a subject wholly within the state jurisdiction. It proposed to take over some schools under state jurisdiction and to regulate the salaries and appointments of teachers in the private schools. The Christian population who are running a large number of schools in Travancore-Cochin thought that this bill invaded the Fundamental Rights of the minorities in Chapter III. They made a great fuss about it. The Education Bill was reserved for Presidential assent, presumably on the advice of the Law Minister of the Kerala Government. When it came to him, the President sent it to the Supreme Court. He has been empowered by Article 143 to send any question of law or fact of national importance to the Supreme Court for an advisory opinion. He sent it, the opinion was given and the bill was modified. The delicate constitutional issue in that matter was whether the President referred it to the Supreme Court at the request of the Kerala Government or he did it on the advice of the Law Ministry at New Delhi. If he had referred to the Supreme Court at the request of the Kerala Government there is no problem at all, but if he had done it on his initiative or on the advice of the Law Ministry here, it was open to the Kerala Government to make a fuss of it that the President has no power to do so and a political controversy could have arisen.³⁰

There is now a drastic change in the politics of the country. There is no longer the monopoly of the Congress Rule. Opposition parties have formed governments in different states and federalism is now really put to test. The Presidential assent for state bills

30. Ibid., pp. 22-23.

poses a dilemma. The President acts on the advice of the Central Cabinet and not in any case on the advice of the State Cabinet even in matters of state legislation. It means that the Centre, in the name of the President, can veto state legislation and can be a stumbling block in the way of state legislation. The Australian Constitution had also a similar provision of reservation of bills by the Governor to the Crown, but the Crown is advised in the consideration of the bill by the State government and not the Federal government. A similar provision should be incorporated in the Indian Constitution by suitably amending the present provision. The Home Ministry can take a lead in this direction, such a provision is sure to build up the morale of the Opposition parties and they will not be bound by the political strings of the Ruling Party at the Centre in advising the President on matters solely pertaining to state legislation.

Any study of the Union-State relations is incomplete without examining the role of the Planning Commission. Undoubtedly matters concerning Planning are mostly financial which fall under the overall jurisdiction of the Finance Ministry. But as the Home Ministry happens to be the guardian of the whole federal set-up, a few observations about its role became inevitable. The Planning Commission is neither a statutory body nor created by the Constitution. Technically states are not bound by its decisions; but in practice no state can dare go against its decisions mainly for two reasons. Politically the association of the Prime Minister with the Planning Commission is a great factor in lining up the states with the Centre; and secondly, the control of the financial strings also rests with the Planning Commission. The State governments are

awarded two types of grants viz. statutory grant and discretionary grant. The discretionary grants are made available to states on the recommendation of the Planning Commission for fulfilment of national priorities determined by the Commission. States can only go against the Commission at the risk of losing these grants, which are far ahead of the statutory grants. They constitute a lion's share in the total grants that the states receive from the Centre. For instance, "70% of the total expenditure of Planning in the First Plan and almost 65% in the Second Plan relate to matters which have been exclusively assigned to the states like education, health, forests, agriculture, irrigation, electricity etc. It was assumed that conditions in almost all the states were almost similar, if not identical. There were some admitted differences, there were adaptations in particular items to some extent, but by and large, it was assumed that conditions in all the states were similar and similar programmes requiring same administrative action and similar methods of financing should be adopted in all the states."³¹

The Planning Commission thus exercises control over the states through financial strings in the shape of discretionary grants. Besides, the implementation of the plans are also done through central departments, which have further added to the powers of the Centre. Because of this, as Santhanam has very rightly observed;

Each Central Department has become a sort of empire. A spirit of comradeship has been growing between similar Departments in the States and the Centre against other Departments and the Government as a whole.... The initiative for raising the pay of primary school teachers came from the Central Education

31. Ibid., p. 45.

Ministry. When the circular went to State Governments, many State Governments were upset because they had no funds, and they could not afford to agree to higher pay scales. They knew also that if the elementary school teachers were given increased pay, the entire non-gazetted staff would have to be treated similarly. So, the States were all very hesitant to accept this. The State Education authorities also took it up and the pressure was brought to bear upon the State Governments and they, in turn, began to bring pressure upon the Central Government. Tentatively an agreement was reached that a certain part of the increase was to come from the Centre and a certain part from the States. The wiser States decided that a part of the increase was to come from deficit budget. Similar things have happened in other departments. 32

Another type of grant is what is known as the Matching Grant.

"Under this system central assistance is conditioned upon a State contributing a certain portion of the total cost of a particular scheme. The Government of UP felt that a number of development schemes under the third plan could not be undertaken, as, with its existing resources, it could not meet its share of the expenditure. This compelled the State Government to introduce at the suggestion of the Planning Commission a bill to enhance the tax on landholdings with a view to augmenting its resources. But it aroused tremendous discontent among the people as a result of which a serious crisis³³ overtook the Government of UP."

Above all, the Centre is in possession of almost all the elastic sources of income and states possess comparatively inadequate and static resources. The states are further handicapped by the passing of the Industries Act, by which matters relating to

32. Ibid., p. 56.

33. Amal Ray, Inter-Governmental Relations in India (Asia Publishing House, New Delhi, 1966), p. 121.

industries were brought under the Central administration. And it gave the authority of deciding as to what industries should be included in the schedule of industries. The handicaps surrounding foreign exchange made the confusion worse confounded for the states. Thus in all fields, legislative, administrative and financial, the Centre has been given sweeping powers and the autonomy of states had been seriously endangered. As a result the states, through various means, violent and non-violent, have joined the chorus of clamouring for location of some industry or plant or refinery. A hectic race among states in demanding of industries from the Centre has become the order of the day. "There is the well-known dispute about the oil refinery in Assam. An expert committee reported that in the national interest, a refinery should be located at Barauni. Then the people of Assam backed by the Assam Government threatened satyagraha and succeeded. Every state now wants to force the Central Government to locate some big industry in that state whether from the point of national interest, it is desirable to locate it or not. This is the price the centre has to pay for the price which the states have had to pay in the form of sacrifice of state autonomy."³⁴ The recent example was the agitation and the satyagraha by one Amruta Rao of Andhra Pradesh for the location of steel plant at Visakhapatnam (AP). The agitation continued for about a fortnight and finally the drama ended with the Chief Minister offering a glass of orange to Amrutha Rao, but in the meantime the agitation led to a shocking orgy of violence and lawlessness throughout the state.

34. K. Santhanam, op. cit., p. 59.

Emergency Provisions

A heated dialogue overtook the Constituent Assembly during the discussions on the emergency provisions. Clarifying the doubts and fears of the members, Dr. Ambedkar explained to the Assembly that "these overriding powers do not form the normal feature of the Constitution. Their use and operation are expressly confined to emergencies only".³⁵ The word 'emergency' was deliberately left undefined by the Assembly; and it is the Ministry of Home Affairs which decides as to what emergency constitutes. The main reason behind these provisions were to be found in the complex nature of the Indian society. "Indian history is full of fratricidal wars between regions and communities which always tempted and helped the aliens to establish their hegemony in India. The possibility of repetition of history cannot be easily ruled out, for the Indian society today shows the prevalence of a large number of fissiparous forces based upon language, religion and caste. The diversities of loyalties is so great in India, and at times assumes such a violent form that it is apprehended that primitive tribalism again raise its head to strike a deadly blow at the root of the Indian nationality. At the time of the Constitution-making, the disintegrating forces were already showing their chances of revival. In a country when the diversity of loyalties having deep roots in history contains great potentiality for mischief, and possess a continuous threat to the very existence of the nation, drastic provisions for concentration of authority in national emergency are a dire necessity".³⁶ All

35. Constituent Assembly Debates, Vol. XI, November 25, 1949.

36. Amal Ray, op. cit., pp. 95-96.

this factors culminated in the setting up of a strong Centre with far-reaching powers and the federal structure more or less assumes the shape of unitary form of government during emergencies.

The States must comply with the directions of the Central Government, failing which Article 365 can be invoked, thereby superseding the government of that State. The President can declare an emergency, if he is satisfied that the security of India or any part thereof is threatened by war, external aggression or internal disturbance (Article 352). The satisfaction of the President mentioned in Article 352 is subordinate to Article 74 which lays down that there shall be a Council of Ministers to aid and advise the President. It is, therefore, obvious that the satisfaction of the President is the satisfaction of the Council of Ministers. The word 'grave emergency' in Article 352 is very ticklish and misleading. A proper scrutiny of the Article is bound to reveal that proclamation of emergency can be justified only if it is grave. Not only this even grave emergency is not sufficient for proclamation unless it really threatens the security of the country. "Then comes the phrase 'any part of the territory thereof'. It is well known that under Article 1(3), the territory of India shall comprise 'the territories of states', the union territories and such other territories as may be acquired and this naturally means that the three factors described in article 352 namely war, external aggression or internal disturbance occurring in any state or union territory is enough to bring in a proclamation of emergency. War or aggression is within the Union list in item I and it is the duty of the Union Government to protect the whole or any part of the country against it, but internal disturbance comes under item I of

the State list and as such within the purview of the State governments. Was it the intention of the framers of the Constitution that in case of 'internal disturbance' the union government should function on the request or in aid of the State Governments. In this connection it is interesting to make a reference to Section 102 of the Government of India Act, 1935, on which Article 352 of the Constitution of India is modelled. The Section says: 'The federal Legislature shall, if the Governor-General has in his discretion declared by proclamation that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance have power to make laws for a province or any part thereof'. In this Section of the Act there is no reference to 'any part of the territory thereof' and this addition in the Constitution must have some significance. Use of the phrase 'internal disturbance' in the Act of 1935 is meaningful in as much the Governor-General of India has special responsibility in regard to 'peace and tranquillity' of India or any part thereof. As such he should function independently of the provincial governments, though the Governor had a similar responsibility in regard to his province or in this capacity he could be a valuable source of information for the Governor-General.³⁷"

Article 356 lays down that if the President on receipt of the report from the Governor of a State or otherwise is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this

37. S.C. Dash, "Emergency Provisions and the Union-State Relations in India", in S.A.H. Haqqi, (ed.), op. cit., pp. 65-66.

Constitution the President is empowered to assume to himself all or any of the functions of the Government of the State. The impact of this Article is of more far-reaching significance than Article 352. Under Article 356 the Central Government can take over the State Government thereby dissolving the State Legislature on the plea that the State Government cannot be carried on in accordance with the provisions of the Constitution. But under Article 352, the Centre acquires concurrent authority over matters enumerated in the state list without dissolving the state legislature. Section 93 of the Government of India Act 1935 empowered the Governor to issue a proclamation of emergency and assume all powers to himself. The Constitution of India's Republic does not contain such a provision. Article 356 needs suitable amendments clarifying the point as to whether the Governor, while sending the report to the President is bound by the advice of his Council of Ministers or he can do it on his own discretion.³⁸

Article 356 can be invoked under four circumstances, when - there is complete breakdown of law and order machinery in a state, ministerial instability, breach of constitution and refusal on the part of a state to comply with the Union directives. All this blanket provisions contained in Article 356 leave much scope for the misuse of power by the Home Ministry. The State of Kerala and West Bengal, in particular, had been the unfortunate victims of the abuse of powers by the Home Ministry under Article 356. This Article has been utilised as stock-in-trade to crush political

38. For instance, it was openly alleged by E.M.S. Namboodiripad of Kerala in 1959 that Ram Krishna Rao, the Governor had sent the report to the President without consulting the Cabinet. If this be so where is the autonomy of states?

opposition. For instance, there had been a demand for its application in Assam in the summer of 1960 owing to the rampant inefficiency of the state Administration in handling problems of law and order. But the demand failed to convince the Home Ministry to invoke Article 356 of the Constitution. Exactly the reverse happened in the case of Kerala. There was a well-organised agitation by the Liberation Front, consisting of the Congress, PSP and the Muslim League which ultimately resulted in the imposition of Presidential Rule on Kerala (1959). The attitude of the Ministry towards these two states is basically political. The vacillation rather procrastination on the part of the Ministry in regard to the state of Assam was due to the fact that Assam was governed by the same party as that at the Centre; but the state of Kerala had a communist government which to the Home Ministry is what a red-tag to a bull is. Similar indifference was shown by the Ministry to Jyoti Basu of West Bengal who was prepared to prove his majority in the Assembly within two days of his being invited to form the government; but sarcastically, in Kerala, Achuta Menon who was not prepared to call the Assembly for three months was installed in power. This was how the emergency provisions were made use of by the Ministry.

In the case of USA and Australia, the federal government can intervene in the state affairs only at their request to that effect. But in India the Union has cast upon itself the duty to protect every state from external aggression or internal disturbance and to ensure that the government of the state is carried on in accordance with the provisions of the Constitution. This provision is effective only if it is not used for political purposes. But power, as it is, is intoxicating, effective safeguards ought to have been provided

for its possible misuse. One such safeguard might be judicial scrutiny or scrutiny by Parliament of things done under Articles 352 to 356 of the Constitution. That would have lessened the amount of danger from the side of the Home Ministry and would go a long way in the future evolution of Indian Federation.

Similarly the Centre can intervene if a state fails to comply with or give effect to any of the directions given in the exercise of the executive power of the union under any of the provisions of the Constitution (Article 356). Santhanam correctly visualises;

Let us conceive of a situation in which the Central Government cannot be carried on in the normal manner; there may be no stable Ministry; there will be change of Ministry everyday. No remedy has been provided in the Constitution.... The President, both according to the written provisions and much more according to unwritten conventions cannot interfere. He can only choose the Prime Minister.... He is to go on choosing the Prime Ministers and let them manage or dissolve the House of the People. If a general election does not result in the emergence of a stable Government, he is helpless. So far as the Central Government is concerned, if any serious emergency occurs there is no constitutional remedy and the remedy has to be extra-constitutional. But, in the case of a state, it may be suspended even if there is some difficulty about the formation of Ministries. 39

No other federation in the world has clothed the Centre with such sweeping powers as in India. Even the Government of India Act, 1935, whose Section 93 was considered to be most obnoxious seems to be much better than the provisions contained in the new Constitution in so far as it authorises the President (the Home Ministry in practice) to suspend a duly elected Assembly in a state with or without a report from the Governor (Articles 355 and 356).

39. K. Santhanam, op. cit., p. 11.

Article 360 of the Constitution authorises the President to declare emergency if he is satisfied that a State is not managing its finances properly. In such a contingency the state administration is taken over by the Centre. The financial instability in the state may be the outcome of the policies of the Centre but still it is the states who are to suffer. This provision was inserted at a time when England devalued her currency and India had to follow the example of England to keep up her export market. As a safety valve, therefore, the above provision was incorporated in the Constitution. Secondly, the idea underlying the provision is "to make the States act in a responsible manner in fiscal matters, and secondly, to secure close integration of central and state financial policies in the time of a major economic and financial dislocation".⁴⁰

It is, however, true that the citizen in an emergency should be loyal to the Centre and not to the States. But at the same time ample safeguards are to be provided for the possible executive encroachment on these provisions. Politically-oriented application of emergency provisions governing Centre-State relations is no way desirable. However it does not mean that these provisions be deleted but what is required is certain safeguards to save our nascent democracy from the stranglehold of bureaucratic ascendancy. There is of course the need and the necessity for concentration of power in the Union, on account of unstable conditions with which the country is faced; but whether an excessive concentration of authority vesting the Centre with enormous powers to be whimsically exercised is really desirable is a matter for serious consideration. It is

40. Amal Ray, op. cit., p. 108.

admitted on all hands that the growth of national planning and technological development with expanding public sector and heavy nationalised industries, the powers of the Centre are bound to enhance. The growing involvement of India in world politics and, conversely, the increasing internationalisation of activities of the Central Government would tend to give a dominant position to the Centre at the expense of state autonomy, of which the states are becoming increasingly conscious.

New Dimensions in Indian Federalism

The federal set-up was for the first time, since independence was put to test when as many as nine states were lost to the Ruling Party at the Centre after the Fourth General Elections. Hitherto, with the exception of Kerala the Congress Party was in power in almost all the states and the disputes between the Centre and the states were settled within the party's framework. Such ad hoc settlements led to distortions of the entire situation much to the satisfaction of the Congress High Command rather than fulfilling the constitutional obligations. It has undoubtedly left permanent scars on the federal set-up. This could not, however, last long. Even during the undisputed leadership of Nehru, the symptoms began appearing ^{on} the Indian federal scene. The Maharashtra-Mysore-Andhra dispute was in the forefront, which accidentally happened to be the pockets of the Congress Party. Similar discontent among other units of the federation dominated the scene, and the relation between the Centre and states soon became strain on one pretext or the other, be it the demand for separate statehood, steel plants, oil refineries and the like. These factors further added to the already visible

strains, which in no way proved to be a prospect that the country would find appetising.

The States Reorganisation Act, 1956 by creating the State of Andhra Pradesh gave a fillip to lingual chauvinism in the country. Soon after the emergence of Andhra Pradesh as a separate state, on the basis of language, other states also actively joined the bandwagon of linguism and clamoured for separate statehood. Very soon, the process began gaining momentum and the whole country was reorganised by creating more and more states and according statehood to some of the union territories. The creation of more and more states in itself is not bad; but care should be taken to see that the aspirations underlying statehood are mainly economic and social, which are to be wiped out in other ways and that the statehood was not a panacea for those ills. India can be politically viable, administratively stable and better able to hasten economic uplift, if it is a union of more smaller states. There is no reason for fear of balkanisation, provided if it is done with some thought in accordance with a well-knit plan and orderly manner and not in a haphazard fashion, which had been unfortunately the case with the Home Ministry. Language had been recognised as one of the criterion of granting statehood by the State Reorganisation Commission. This has played avoidable havoc with the country and the desirability of language being made one of the basis for granting statehood is seriously doubted. "The creation of linguistic states has resulted in the consolidation of local identities which now compete with national identity for the allegiance of the people. The formation of linguistic states was perhaps inevitable, for so powerful an aspiration could not have been successfully frustrated by a

democratically elected Parliament. It has however created a new problem that of linguistic minorities, there are a substantial number of persons speaking a language or languages other than the language of the state. In Andhra Pradesh there are over two and half a million Urdu speakers, in Assam two million Bengali speakers, in Madras over three million Telugu speakers and in Mysore over a million Marathi speakers.... These and other similarly placed citizens of India have become insecure in their places of habitation. There is urgent need to tone down strident regionalism in order to assure equality of opportunity and treatment to every citizen, in whichever area of India, he happens to be....⁴¹"

The administrative and political crisis, in the Centre-state relationship is obvious and a sense of direction is missing. Transition is bound to cause tensions; but the side-tracking of national objectives to give priority to party objectives had actively promoted cynicism and frustration. The Home Ministry failed to act and react when states under Congress rule were inadequately administered and hardly paid any heed to national objectives and policies. For instance, the State of Orissa was known to be scandalously corrupt and the intervention of the Home Ministry would certainly have brought a change, a change for the better, in the state. Vascillation of a similar kind worsened matters in the State of Bihar. The Bihar Government, which proved totally incompetent in handling famine relief work was given a green signal by the Ministry to carry on with its incompetency. Nor the Ministry budged an inch against the Assam

41. Gopal Krishna, "More Authoritative Centre", Seminar, III, (New Delhi), November 1968, p. 33.

Government, which had proved a failure when a linguistic minority was attacked in the violent language flare-up of 1950.

The strains in the Centre-state relationship has been increasing and is bound to increase if the Home Ministry fails to take steps towards their purposeful solution. The shrunken Congress Party, after the divide of the Congress, which has lost its absolute majority at the Centre has further complicated matters involving the Centre and States in the matrix of a Federal Constitution. To this deteriorating situation may be added the indecision, unconscionable delay and dilatoriness of the Home Ministry which is responsible to a large extent for the growing tide of regionalism and regionally-oriented postures. The country has witnessed smouldering campaigns accentuating regional loyalties. One of the reasons for it is the deep rooted feeling among the states that no decision will be taken unless it is forced. The protagonists of regional loyalties, pressures and threats and mass-demonstrations are far more influential than forces of reason and moderation. The tension that mounted between Haryana and Punjab over the Chandigarh issue is one such instance. It is quite in the nature of politics that political parties join the bandwagon of regional and provincial loyalties; wherever they see some credit to be secured. This process, in course of time, will end up in the piece-meal isolation of the national issues. This process is to be effectively guarded against, for which the responsibility lies with the Home Ministry. The issues are to be settled and shall not be buried before the canker of regionalism sweeps the life of the nation.

A bold decision is required for solving the murky problem of regionalism and such a decision be taken unmindful of the crude

postures of the extremists and the hotheads. Even a slight display of regional feeling at the altar of national feelings be dealt with severely so that blackmail does not pay. But unfortunately, the Home Ministry acted only when the time for the peaceful settlement of disputes has got off the ground. In the Mysore-Tamil Nadu dispute over the sharing of Caverry waters, no decision could be arrived at a meeting convened by the Home Ministry in February 1970, due to rigid postures on the part of both the states. The dispute would be as well referred to a Tribunal for resolving it quickly instead of allowing it to take political overtones which have an infinite capacity for nuisance. The Maharashtra-Mysore border dispute has been hanging fire even after the Mahajan Commission has completed its study and submitted the report to the Ministry of Home Affairs. In the case of Chandigarh, a decision was delayed not because there was doubt about the merits of the decision but because of Ministry's lack of confidence in its ability to contain the repercussions that will be produced. The Shah Commission, on whose recommendation, the former state of Punjab was divided between Punjab, Haryana and Himachal Pradesh recommended that Chandigarh should go to Haryana. The recommendation was neither accepted by the Ministry nor was rejected by it. It kept on hanging somewhere between the two and in the meantime Chandigarh was made union territory. Take the case of the State of Andhra Pradesh; there was complete breakdown of law and order in the state during the Telingana agitation. The Home Ministry had a clear responsibility to end the mess were it not that it cannot trust itself to make a good job of coping with the resulting situation. The lack of timely decision and the tardiness in implementing decisions taken, have brought fissiparous tendencies

in the swim and given impetus to the heralds of mass-oriented politics - the DMK in Madras and the Telingana Praja Samiti in Andhra Pradesh, to mention only two.

Even in the economic sphere, state jealousies thrust decisions that very often hardly make any sense in the wider national perspective. Assam had to be provided with an Oil refinery as it launched a sizable agitation in support of its case. And when the Central Government thinks of Steel plant, the State of Andhra Pradesh ought to be given top priority, which had successfully displayed unhealthy emotion resulting in several violent incidents, causing tremendous losses to public property and the state exchequer. These agitations are a frank exercise in regional chauvinism and there is always the danger that regionalism can become so much a habit in one as lust for power, manipulations and patronage so as to paralyse national unity. It speaks of the incompetence of the Central Home Ministry to make regionalism credible as a viable answer to the challenges of democratic and orderly progress. To this great calculus may be added deep-rooted linguistic loyalties. For instance, the Madras High Court has recently delivered a judgement of far-reaching implications. A Presidential Order passed in 1960 to facilitate the transition to Hindi as the sole official language of the union has been declared illegal. An employee of the Posts and Telegraph Department contended that the requirement to learn Hindi was against the express provisions of the Official Language Act. This Act provided for the continued use of English for official purposes and these resolutions were endorsed by both Houses of Parliament. It was argued that the executive order was in clear violation of this requirement. The High Court has upheld this

contention. The consequences of this judgement is that executive action for the furtherance of Hindi through means and methods involving compulsion will be illegal. This is bound to create certain problems for the Centre which is now precluded from taking preparatory action for the eventual switchover. But irksome as these difficulties may be, the Madras decision only underlines the unquestionable principle that persuasion should be preferred to compulsion in these delicate matters.⁴² There is, therefore, a clear necessity to end this chaos in the country for sustaining a stable democracy. But for the success of a movement, certain conditions are to be fulfilled, all of which seem to have completely lost sight of by the Ministry, in its endeavours for a purposeful solution of the various disintegrating forces. Mere solemn sermons on the virtues of national unity and emotional integration are no substitutes. A more inexcusable error is to give a casual call for unity without adequate programme and well-knit policies together with a determination to implement it. These problems are by no means easy and had proved a bitter pill for the Home Ministry to swallow and digest but unless requisite stamina is built up, all efforts ^{for} carrying the country ahead will end up in wilderness and anarchy.

Desperately enough, the Home Ministry has its efforts and policies diverted to undesirable channels resulting in political cruckoldry. Its reaction to every insignificant incident in states led by non-Congress governments was sharp and immediate. To this end, the Governors were readily utilised as the central tools for clamping down Presidential Rule. The Governor as he is, the Central

42. The Hindustan Times (editorial), New Delhi, February 8, 1971.

Government nominee, acted to His Master's voice. A random look at the galaxy of the Governors reveals the miserable fact that "a man runs for an election and seeks the mandate, in his little constituency, and 10,000 Indians do not think him worthwhile or worthy of their confidence to represent them in the Assembly and they reject him. But what is not good enough for 10,000 Indians is quite good for the whole state to put him as the Governor there. The man who cannot enjoy the confidence of his constituency is to be imposed on the whole state of as big an area of 60 million Indians. Here is a direct mockery of the very spirit of the Constitution. The Governor pledges to protect and preserve the Constitution and to devote himself to the service and well being of the people of the State ... the oath is not to serve the Congress, but the oath is to serve the people of India or the people of the State."⁴³ The Governors, being head of state, according to well-established conventions of parliamentary democracy, ought to be neutral, free from the squabbles of political parties and partisan politics. But their partisan role in many a State had given vent to unwarranted polemics over their functions and position and led to a volley of doubts about the bonafides of the gubernatorial office. Even if original complicity is not assumed by the Home Ministry, vicarious guilt by keeping mum and acting according to the distorted reports of Governors, is established. The following paragraphs attempt to examine this point.

Punjab: For the first time President's Rule was foisted on the State of Punjab in 1959 by dismissing the duly elected Gopichand

43. Nath Pai, Lok Sabha Debates, Vol. IX, No. 2, November 15, 1967.

Bhargava Ministry. The action of the Ministry was motivated by sheer party-politics; it was the outcome of cliques and rivalries within the party. The facts of the case were: "The Sachar-Kairon Group in the State Congress Party was critical of the Ministry, and put forward allegations of corruption, inefficiency and nepotism. The Congress Parliamentary Board thereupon directed the State Congress Legislature Party that a panel of ten names should be prepared and sent to it for the selection of six-member cabinet for the State. The required panel was prepared. The Board recommended five names, leaving the choice of the sixth to the Chief Minister Bhargava, who expressed his inability to accept the recommendations. The cost of this defiance was his virtual dismissal, majority support for him in the Legislature notwithstanding".⁴⁴

Kerala: After the Second General Elections in 1957 for the first time in the country, a party (Communist Party) other than the Ruling Party at the Centre came to power in Kerala. But very soon its rule was abruptly interrupted by the President obviously on the advice of the Ministry of Home Affairs through a proclamation of emergency under Article 356 of the Constitution on July 31, 1959. The action was taken on the report of the Governor, which the Home Minister had himself admitted in Parliament. The charges included political murders, insecurity of citizens, discrimination in administration, release of prisoners who are communists etc. The Governor reported;

44. Sushil Kumar, "State-Politics: A Survey", Seminar 87, November 1966, p. 14.

The crux of the legal and constitutional question is whether the Kerala Government has lost the support of the overwhelming majority of the people and whether the allegations made of maladministration and subversion of democracy are substantially true.... The allegations made against the government are substantially true and I am convinced also that the Government has lost the support of the majority of the people. While the securing of a majority of seats in the legislature, however meagre, is very relevant at the time of forming a Government, it cannot be pleaded as conferring a continuing right to claim the confidence of the majority. There is no doubt that there has been a tremendous shift in the minds and feelings of the people. I do not think that public opinion can be ignored without serious consequences for the future. The only solution which is available to us therefore is the exercise of power under Article 356 of the Constitution. 45

Taking for a moment the allegations against the Communist Ministry to be true, what was the Governor doing when all that was happening in the state? He has taken the oath to "preserve, protect and defend the constitution and to devote to the service and well-being of the people".⁴⁶ The point which is quite subtle is as to why the Governor had to wait for such a long till it reached the boiling point. He must have been definitely aware of the situation and ought to have acted keeping up the sacred oath which he had taken before assuming the office. The Governor was presumably waiting for a communication from the Home Ministry showing him the guidelines for further action. If the Governor was really not aware of the situation, then surely his actions were ultra vires of the Constitution (Article 159); and if he had merely been waiting for an order from New Delhi, he was devoting not to the well-being of the

45. Kerala Governor's Report to the President of India, Parliament Library (Library and Reference Service) Government of India Publications, New Delhi, p. 17.

46. Constitution of India, Article 159.

people of his state but to the people who were pulling the chain from New Delhi. The Governor's contention that the Government had lost the support of the majority of the people holds no conviction. This is his forecast and governments can never be run on the basis of forecasting or an astrologer's report. So long as a Ministry enjoys the confidence of the Assembly; it has the legitimate right to be in the office. The fate of a Ministry cannot be decided in the Raj Bhavan or the chambers of the Home Ministry. It has to be decided on the floor of the Assembly. The Governor reports that there was a tremendous shift in public opinion and feelings of the people. How did the Governor ascertain the shift in public opinion? No referendum was held to know the mind of the public nor the Assembly was summoned to test the strength of the Ministry. Such a vague analysis on the part of the Governor in no way justified the suspension of the Assembly.

A similar unfortunate episode was repeated after the 1965 elections. The elections were held amidst unprecedented difficulties and handicaps. Before the elections all known Communist leaders, with the exception of Namboodiripad were arrested under the DIR. These arrests undoubtedly were political; the motive was to spoil their party position before the electorate. This is the least that can be expected from the Ministry of Home Affairs. Elections were held in this background. The results of the elections came as a bolt from the blue to the Ministry; the Marxists were returned to the Assembly as the largest single party with 40 seats to their credit. When, even the timely application of the DIR failed to divert the waves of public opinion, in favour of the Congress Party, the Home Ministry refused to release the 29 detenus who were elected

to the Assembly. The Governor started unsuccessfully a dialogue with the Opposition leaders for the formation of a coalition government. This technique could not work and refuge was sought behind the blanket provisions of Article 356. The Governor reported to the President that no stable ministry could be formed and pleaded for proclaiming Presidential Rule under Article 356. The Assembly was dissolved before it was summoned. The leader of the largest single party was not permitted to summon the Assembly, nor the duly elected leaders were released; the normal functioning of governmental machinery was suspended by Presidential Rule. This was how democracy was made a mockery by the Ministry of Home Affairs. The Times of India observes:

Though the fresh proclamation of the President's Rule in Kerala does not violate the letter of the Constitution but the manner in which the proclamation has been made certainly violates its spirit ... by acting as it has done, the Congress Government at the centre has created the impression that it was alarmed at the possibility of a non-Congress Government being formed in Kerala. Even the legality of the action has been questioned ... but all this could have been avoided if the Assembly duly elected by the people had been convened. 47

In his report to the President, the Governor declared:

In the circumstances, one cannot say that the SSP and the Right Communists would join with the Marxists in the immediate elections.... Even if all the three parties combine it is evident that they could not win a majority of seats.... The general opinion in the state is that if the elections are held now, the results would be much the same as they were in the mid-term elections. Shri R. Shankar, the last Chief Minister shares the same view. I fully endorse the view. 48

47. The Times of India (editorial), New Delhi, March 26, 1965.

48. Summary of the Kerala Governor's Report, October 17, 1965, addressed to the Union Home Minister, Parliament Library (Library and Reference Service), Government of India Publications, New Delhi, p. 3.

How can the Governor claim that the Government cannot be carried in accordance with the provisions of the Constitution when he did not allow the Assembly to meet? "How can it be said that Article 356 has to be invoked when the leader of the largest single party was not given a chance to try for forming a coalition? It must be remembered that even Sir Winston Churchill at times failed to command an absolute majority. If the doctrine of which Mr. A.P. Jain pronounces is correct then Mr. Wilson cannot be the Prime Minister of England today. He has not got an absolute majority in the sense that if all Opposition Parties unite he can defeat them at any moment".⁴⁹

The period of proclamation was to expire on November 11, 1965. The Governor sent a report on October 17, 1965 recommending an extension of the presidential rule on the assumption that no party or group of parties will be able to form a stable government even if elections are held again. Here again the Governor acted on the basis of forecasting. He forecasted, no party will be able to form a stable government, therefore, elections are meaningless. The logic is quite absurd. It is common knowledge that the opposition in India are awfully divided; no single opposition party can afford to form government, and on the basis of it, by the same logic, it can be asserted that since there is no stable opposition party, let the Congress party form the government even without elections, avoiding thereby the elections expenses. But the rules of parliamentary game are quite different. The right place for determining

49. N.C. Chatterjee, Lok Sabha Debates, Vol. XLVII, No. 2, November 4, 1965.

the stability of a Ministry is the Assembly, by a vote of the members present. In this context, Santhanam very correctly observes;

It is foolish to rush to the conclusion that President's rule is the only alternative. If everytime, there is no majority, Presidential rule is to become automatic, the Constitution must be deemed to have broken down and all those who are against democracy will rejoice. 50

The Ministry had fully utilised the verbosity of the Constitution and did not abstain from using emergency provisions in normal times to dislodge duly elected assemblies and had never to prevent lawfully elected parties from forming governments. The Kerala episode will remain a scar on the implementation of the democratic Constitution of India.

Rajasthan: In the Fourth General Elections, the Congress secured 89 seats out of 184 and the rest went to the opposition. The opposition united and formed the Samyukta Dal. In February 1967, the Opposition leaders of Swatantra Party, Janta Party and independent members wrote to the Governor expressing their willingness to form the government, as the Congress Party which secured only 88 seats (one member being elected from two constituencies) was reduced to minority in the face of the opposition forming an alliance. The Governor, Dr. Sampurnanand, proposed to make an announcement on March 3, but that was postponed. The situation inevitably caused restlessness in the opposition groups. What added insult to injury was the imposition of Section 144 in areas in which the Governor and Ministers lived. Besides, police forces from UP and MP were made to rush to Rajasthan, probably to check lawlessness and to prevent the

50. The Hindustan Times, March 3, 1965.

possible agitation of the Opposition parties.

On March 4, 1967 the Governor asked Sukhadia to form the government, as the Congress emerged as the largest single party in the Assembly. The Governor did not, in his wisdom, count the votes of the independent members, which was totally partisan. Do the people who elected them go unrepresented in the Assembly and moreover what about their vote in the Assembly? These facts were completely ignored by the Governor. The tardiness on the part of the Governor in making a final decision is not understandable. The election results were declared on February 20 and February 28 was the day on which he should have called the Assembly. The Assembly was not summoned and what made the Governor to vacillate is undoubtedly the instructions from the Home Ministry. The Assembly was later proposed to be convened on March 22 but on the persistent demands of the opposition leaders the Governor agreed to convene the Assembly on March 1. During this interval, Sukhadia, unsuccessfully frustrated all chances of forming the government and finally had expressed his inability to form the Government. Under such a contingency the Governor should have called the leader of the opposition party to form the Government, but he did not do so and straightway reported the matter to the Home Ministry to declare Presidential rule in the state. The Governor ought to have summoned the Assembly, which is the right platform to test the strength of the party/parties. The Presidential Rule was declared one day before the Assembly was to meet and heavens would not have fallen if the Governor would have waited for 24 hours more, when he had already kept on hanging matters for full fourteen days.

The plea of the law and order problem behind which the Home Minister sought refuge is absolutely egregious, with a view to foster political ends. The states had managed even the worst conditions, when the law and order machinery had gone completely out of order and no presidential rule was imposed there. Mention can be made of the Sahay Government in Bihar, which proved totally ineffective in handling the delicate issues arising out of famine; the Madras Government in the same fashion proved to be a misfit during the anti-Hindi agitation in 1965. To set the record straight it ought to be pointed out that Presidential Rule was clamped in Rajasthan in the background of Sukhadia's refusal to form the Government despite the opportunities provided to him by delaying the matter to buy over other M.L.A's in the meantime.

West Bengal Episode: The arbitrary dismissal of the West Bengal United Front Ministry by the Governor on November 21, 1967 and the imposition of Presidential Rule was a shocking event in the annals of constitutional government in India. At the beginning of November the State Food Minister P.C. Ghosh resigned and by November 6, the total resignations shot up to 16. The Governor Dharam Vira in a meeting with the Chief Minister and his colleagues expressed doubt regarding the stability of the Ministry and asked them to summon the House as soon as possible. The Chief Minister agreed and decided to convene the Assembly on December 18, 1967. The Governor, in the meantime kept on wondering capriciously between Delhi and Calcutta to consult the Home Minister. And on the 21st of November the day of the dismissal of the Ministry, late at night, the Governor of West Bengal sent a message to the Chief Minister of West Bengal,

Shri Ajoy Mukherjee, at about two o'clock, when he was confubulating with the head of the Bhartiya Kranti Dal, Shri Mahamaya Prasad Sinha, discussing as to how some of the defectors of the Bhartiya Kranti Dal were likely to come back again to the United Front. At two o'clock he gets a message from the Governor and the Governor asks him to answer by four o'clock as to whether he was ready or willing to have a date earlier than 18th December, which he had already fixed as a date for the Assembly to be convened. Shri Mukherjee sent back a message that he would not on his own give an answer but the day after the next day, i.e. on 23rd, the Cabinet was meeting and then he would be in a position to tell the Governor whether an earlier date than 18th of December could be decided upon. This has not been denied⁵¹.

The Governor did not wait till December 18 and dismissed the United Front Ministry on November 21 and on the same day P.C. Ghosh's Ministry was installed. Ajoy Mukherjee and the members of his Cabinet requested the President of India to refer the matter to the Supreme Court under Article 143(2) of the Constitution. The Home Ministry did not accept the suggestion obviously because it knew that its case is shaky and the Supreme Court is bound to award a solemn discourse. Ajoy Mukherjee agreed to call the Assembly on December 18 and the Governor did not say anything. He could have as well informed the Chief Minister to summon the Assembly earlier than December 18. The Chief Minister did not refuse to call the Assembly, all that he wanted was some more time, till December 18. And by doing so he did not violate any of the constitutional provisions.

51. Hiren Mukherjee, Lok Sabha Debates, Vol. X, No. 5, December 1, 1967.

Article 174(1) is crystal clear; "the House or the Houses of the Legislature shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for the first sitting in the next session". The Chief Minister by not convening the Assembly on November 21 did not commit any breach of the Constitution. Moreover, the responsibility of state administration falls not on the Governor or Home Ministry but on the State Council of Ministers. Article 164(2) provides: "the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State". Visualising all situations Dr. Ambedkar cogently observed in the Constituent Assembly:

The Ministry shall hold office during such time as it holds the confidence of the majority. It is on that principle that the Constitution will work. The reason why we have not so expressly stated, it is because it has not been stated in that fashion or in those terms in any of the Constitutions which lay down a parliamentary system of government. 'During pleasure' is always understood to mean that the 'pleasure' shall not continue notwithstanding the fact that the Ministry has lost the confidence of the majority. The moment the Ministry has lost the confidence of the majority it is presumed that the President will exercise his 'pleasure' in dismissing the Ministry and therefore it is necessary to differ from what I may say the stereotyped phraseology which is used in all responsible governments. 52

The Governor, thus, in dismissing the United Front Ministry not only violated the Constitution but brushed aside the well-accepted conventions of the parliamentary system of government, i.e. the responsibility of the Cabinet to the legislature. The dismissal of the UF Ministry is certainly politically motivated.

Haryana: The State of Haryana also became a victim to Article 356 of the Constitution. The factors required for the

52. Constituent Assembly Debates, Vol. 8, June 1, 1949, p. 520.

imposition of President's Rule under the said article include, constitutional breakdown, lack of stable ministry and alternate party that can form the Government and breakdown of law and order. In the case of Haryana all these requirements were missing. The State of Haryana, even, never became a subject of discussion in Parliament. Despite all this the Ministry of Home Affairs, on the receipt of the Governor's report declared President's rule in the State on November 21, 1967. The Governor says that the administration is paralysed. When did he discover that? He discovers that when it suited him. He says Ministers are appointed to retain the majority of the Government, and this, he terms an abuse of constitutional powers. Any expansion of the Ministry by appointment of Ministers is no abuse of the constitutional power. Any government—Congress or non-Congress — could be accused of that, if that would be the sole criterion to decide what the abuse of power is.... It must be remembered that the number of Ministers appointed in Haryana will be more than what has been done after the present Governor took charge. Many Ministers have been appointed before that. He has never thought so. When the question was posed to him, rather categorically, he says, 'no', there has been no occasion. He still commands the majority, in his report, he does not say that the present government has lost the majority, lest the President might think that because somebody has gone over to the Congress, the strength of the Congress Party has increased and, therefore, he has lost the majority.⁵³ The Governor in his report says:

53. Surendranath Dwivedi, Lok Sabha Debates, Vol. IX, No. 6, November 21, 1967.

The new state has had a raw deal so far. What Haryana needs now is a clean and efficient administration. Mid-term elections may be arranged as soon as possible after the administration has been toned up by a brief space of Presidential Rule.... It is to be hoped that in mid-term elections so many opportunist legislators will not return to the Assembly.... The defections have become very frequent. The opposition could never reconcile itself to its position as a responsible Opposition. 54

The Governor, therefore, suggests in his report, an interregnum of President's rule, so that enough preparations be made for a fresh poll, which alone in his opinion can better the administration. It is in no way the responsibility of the Governor to judge the efficiency of administration. His responsibility, to be strictly technical, is to call the Assembly, whenever he is doubtful of the majority of the party in power, in the Assembly. The Governor should have treated constitutional and political issues separately. The Governor is there to defend the constitution not to defy its provisions. "In Pondicherry", for instance, "the elected representatives gave notice of a vote of no-confidence motion in Assembly and it was found that they were in the majority. The Assembly was adjourned. Even though the present Governor, Mr. B.N. Chakravarti, was conscious that the ruling party had the majority of members, still he decided against the Ministry."⁵⁵

Uttar Pradesh: Charan Singh was sworn in as Chief Minister in February 1970 at the head of a single party, BKD Government. Some

54. See Haryana Governor's Report to the President of India, November 17, 1967 (Parliament Library, Government of India Publications, New Delhi), pp. 5-8.

55. Sezhiyan, Lok Sabha Debates, Vol. IX, No. 8, November 23, 1967.

months later the Congress (J) joined the Ministry, which led to coalition Government. After sometime the Congress (J) decided to withdraw from the coalition, which, in fact, restored the status quo ante and did not in any way affect Charan Singh's Ministry. The Governor acting on the advice of the Attorney General, an appointee of the Central Government, dissolved the Assembly, without providing Charan Singh a chance to test his party's strength in the Assembly. The partisan behaviour of the Governor made the entire issue controversial and made the Governor's role suspicious in the eyes of the general public. The decision was transparently a political stunt since the Home Ministry has a lurking fear that if the Assembly is summoned Kamalapati Tripathi may not get the majority support in the Assembly. By doing this, the Home Ministry had in the most sordid manner glossed over the recommendations of the Administrative Reforms Commission.⁵⁶ Constitutional provisions were deliberately distorted

56. The ARC in its report on Centre-State Relationship observes;

"When the governor has reasons to believe that the Ministry has ceased to command a majority in the Assembly, he should come to a final conclusion on this question by summoning the Assembly and ascertaining its verdict on the support enjoyed by the Ministry when a question arises as to whether the Council of Ministers enjoys the confidence of the majority in the Assembly and the Chief Minister does not advise the Governor to summon the Assembly, the Governor may, if he thinks fit, suo motu summon the Assembly for the purpose of obtaining its verdict on the question."

Similarly Dr. Ambedkar, while replying to the debate on Article 356 of the Constitution on August 4, 1949 observed in the Constituent Assembly;

"I do not altogether deny that there is a possibility of this article being abused or employed for political purposes. But that objection applies to every part of the Constitution, which gives power to the centre to override provinces. The

...contd. on next page

to serve political ends. In the whole rigmarole leading to the manufactured crisis in UP, the Home Ministry's role was totally partisan.

The Governor is reported to have said: "In this situation of claims and counter-claims (referring to Mr. Charan Singh and Mr. K. Tripathi) and the fluid party positions, I am satisfied that no stable government can be formed".⁵⁷ Now, where is the evidence on the basis of which the Governor predicted that no stable government can be formed? And what made him to proceed so hurriedly when the Government was technically in office? Whatever be the reasons, is it proper in a parliamentary democracy to evade the verdict of the Legislature? The Governor ought not to have taken such an idealistic view of party loyalties and political bickerings, as such an attitude on the part of the Governor is bound to prolong the impasse. The Home Ministry in this case and in other cases mentioned above, should have acted with circumspection and correctitude that the conditions demand.

The Fourth General Elections gave a big jolt to Centre-State relationships. The context in which the Constitution had functioned

proper thing we ought to give effect is that such articles will never be called into operation and that they would remain a dead letter. I hope the President who is endowed with these powers will take proper precautions before actually suspending the administration of the provinces. I hope the first thing that he will do would be to issue a mere warning to a province that has erred, that things were not happening in the way intended to happen in the Constitution. If that warning fails the second thing for him to do will be to order an election allowing the people of the provinces to settle matters by themselves. It is only when these two remedies fail that he resort to this article."

57. The Hindustan Times, October 3, 1970.

till then is something different from what it is going to function from now onwards. A new leadership has emerged totally different from the old guard. The states have become very much conscious of their rights and privileges and they can no longer be treated as passive spectators in the process of formulation of major policies. The future development of parliamentary government depends solely on the manner in which the Home Ministry decides to act. This is the real issue to be tackled by the Ministry. One way would be to foster greater co-operation between Centre and States rather than regimentation of the colonial era.

The Governors, if they so desire, can be of great help in keeping up the balance between the Centre and States. They must act as upholders of the Constitution than mere agents of the Home Ministry. "The Governor", as Dr. Ambedkar had observed, "is the representative not of a party; he is the representative of the people as a whole of the State. It is ⁱⁿ the name of the people that he carries on the administration. He must see that the administration is carried on on a level which may be regarded as good, efficient, honest administration."⁵⁸ Unmindful of the party-in-power, they have to act independently and for that sufficient safeguards had been provided in the Constitution as regards their pay etc. The behaviour of certain Governors has left an ugly scar on the working of parliamentary government and an impression gathered momentum that they are the loyal servants of the Home Ministry. This is mainly due to the fact that politicians belonging to the ruling party, mostly rejected at the polls by the electorates, were made governors. Their action did not

58. Constituent Assembly Debates, Vol. 8, June 2, 1949.

evoke happy responses and left very little scope to build up healthy traditions. Maximum care ought to be taken regarding their selection and governorship should not be treated as rewards for services to the ruling party. Nor they should be counted as a pawn to manipulate things in its favour by the Central Government. As the days pass by, the role of Governor is assuming greater significance and, in fact, he constitutes the hub of the entire Federal structure, and unless he performs his duties honestly nothing favourable can be predicted for the future evolution of Indian federalism.

✓ The linguistic emotions have also taken deep roots, displaying very often chauvinistic loyalties in place of national unity. To put in the words of Santhanam:

the people of a linguistic state also begin to think that after a Central Institution is set up in their territory it belongs to them. For example people talk of as if the Coach Factory at Purambur belongs to Madras, the Chittaranjan Locomotive Factory belongs to West Bengal.... This leads to an expectation that the staff of these central institutions should be restricted from their locality ... it is not suggested that it is the state governments who are exercising this pressure. It is the popular pressure which the State Governments in their own interest are not unwilling to yield. We have to watch this tendency and take corrective steps to see that on the one hand the states are not reduced in the legitimate fields given to them by the Constitution and on the other they do not try to expand in the central fields which do not belong to them. 59

Such regional and lingual pressures had accentuated rivalries between different units of the federation, the repercussions of which are detrimental to country's interests. Rabid regionalism and the language controversy has caused considerable avoidable panic in the country. It is not too late even now for the Home Ministry to consider these issues coolly before the current takes too deep in

59. K. Santhanam, op. cit., pp. 68-69.

favour of the separatist tendencies and acquire a fearful momentum of their own.

An autocratic approach is bound to produce misapprehensions in the states. The rampant misgivings towards the Centre is largely the outcome of the Ministry's reluctance to take a pragmatic look at the State problems. There is hardly any interdependence between States and Centre. The Governors' conferences, the Chief Ministers' conferences and the like practically bore no fruit in that direction. The tendency that is fast developing in the states, to exert pressure through violence for the realisation of one thing or the other is the symptom which speaks of the disease with which the entire body politic is confronted. The recent opposition of the Madras Government to join the All-India Service of Engineers⁶⁰ and the similar indifference of the states of Andhra Pradesh and Mysore towards the Indian Educational Service reveals that relations between the Central Government and the state governments are not upto the mark. The constant turmoil in the Hill areas of Assam had been a source of perpetual nuisance to the Ministry of Home Affairs. "The All-Parties Hill Leaders' Conference outright rejected the proposals of Asok Mehta Committee; which short of a regional federation, had envisaged the largest possible autonomy for the Hill areas of Assam within an undivided state".⁶¹ All these warrant the need for evolving uniform standards, closer interdependence and an equitable distribution of the economic gain in the country, for which the seventh schedule of

60. For details see Lok Sabha Debates, Vol. XVII, No. 51, April 26, 1968.

61. Public Administration, Journal of Government's Affairs and Administration in India (Bhargava Estate, New Delhi), Vol. 6, No. 4, April 1968, p. 11.

the Constitution can be revised. Some parts of the Indian Union are being poorly attended to by the Ministry. This lop-sided policy gave an impetus to clamour for statehood. In case of Manipur, for instance, "there are as many political demands as there are ethnic groups, not all of them pursuing their objectives through constitutional means. As against the reformists, there are some who are separatists, if not secessionists in their pursuits.... the statehood demand in Manipur had a very special emotional significance.... The demand for statehood invariably has such a wide popular base in Manipur that it cut across party decisions.... The people of Tripura are seemingly agreed that the central policy towards Manipur is discriminatory. And the feeling is by no means confined to politicians. It percolates down to the lowest section of society in the valley.... Why, otherwise Nagaland with slightly more than half its population should, they ask, have a full State and Manipur a mere Union Territory? They also imagine that statehood carries with it substantial financial benefits. Here again Nagaland's example is frequently quoted. Nagaland with less than one crore of internal revenue is given a central subvention of about Rs. 38 crores annually while Manipur with Rs. 2 crores of revenue gets only Rs. 14 crores. If tribal advancement is the plea then Manipur too has a hill tribal population numbering 300,000.... The opposition parties have set up a Statehood Demand Committee which launched a direct action programme under its auspices in March 1967.... Under the obvious SDC's inspiration, although its spokesman denied it, some Imphal students held a black flag demonstration on the last Republic Day."

62. The Hindustan Times, March 7, 1969.

Towards these problems, the Ministry has yet to bent up its energies with a view to evolve remedies before things go out of order in such vulnerable parts. Similarly a change in attitude towards states run by non-Congress governments is necessary.

J.M. Patodia openly complained in the Lok Sabha "Soon we got elected, several files have been removed from Madras to Delhi. The defeated man, Mr. Bhakvatsalam dispatched all these files to Delhi. When the people have voted us to power, are we not entitled to see these files and take action against these people? Is this the way of treating non-Congress administration?"⁶³ Double standards on the part of the Ministry will definitely provoke fissiparous tendencies and lead to a complete paralysis of national unity.

Unlike the United States of America where all the federal units are equally represented on the upper chamber of the American Congress, the Senate, the upper house in India does not recognise equal representation of states. A few states on account of their size and population have appropriated a lion's share in the Rajya Sabha. This is bound to breed discontent in smaller states. The Hindi belt comprising the states of UP, Bihar and MP have an upper hand to pay to the piper and call the tune. One remedy to end this hegemony is to give equal representation to all states, irrespective of size, population, economic stability and so forth, as is the case in the United States. Towards this end, the Home Ministry can initiate a move for the amendment of the Constitution.

The States Public Service Commissions have failed to project an image in matters of high standards based on merit. The Law

63. Lok Sabha Debates, Vol. VI, No. 31, July 4, 1967.

Commission (1958) desperately lamented over the state of affairs.

It observed;

Having regard to the important part played by the Public Service Commission in the selection of subordinate judiciary, we took care to examine as far as possible the Chairmen and some of the members of the Public Service Commission in the various states. We are constrained to state that the personnel of these public service commissions in some of the states was not such as could inspire confidence, from the points of view of either efficiency or of impartiality. There appears to be little doubt that in some of the states appointment to these commissions are made not on considerations of merit but on grounds of party and political affiliations. The evidence given by members of the commission in some of the states does not create the feeling that they do not deserve to be in the responsible posts they occupy. 64

The discourse was awarded to the Home Ministry in 1958 but the slackness of the bureaucracy prevented the Ministry to proceed ahead. The present qualifications prescribed by Article 316(1) for officials appointed to commissions, any person who held any office in government for a period of ten years is eligible for appointment. A strict constriction would permit any government servant, even at the lowest rung of the hierarchy, who has had ten years' service to be appointed as member and in actual practice, there have been instances of questionable appointments in this category. Besides providing, therefore, for a minimum length of service, it seems necessary also to prescribe other qualifications indicating the kind, level and quality of experience that should be required of persons filling such posts. A person who has served in the Government of India or under the Government of a state for at least ten

64. Report of the Administrative Reforms Commission, Centre-State Relations (Government of India, New Delhi), Vol. I, pp. 196-7.

years and held the office of Secretary to Government or Head of a Department under a State Government or an office of equivalent rank under a State Government or the Government of India or the Principal Officer in an institute of higher learning.⁶⁵ As far as possible members of the State Public Service Commissions should be from outside the state, which arrangement, though not a fool-proof, can work as bulwark against political abuse and ministerial interference. The Home Ministry and the Union Public Service Commission also should keep a liaison with the commissions so as to enthuse in them the need for maintaining proper standards in the services and to streamline the integrity of the State personnel.

By the States Reorganisation Act, five zonal councils, each consisting of three or four states were constituted with a view to bring closer co-ordination in the implementation of various policies and plans and to evolve uniform policies in economic and social spheres. These councils started functioning from the middle of 1957. The Councils proved a pathetic fig-leaf in ironing out inter-state disputes and the centre-state rivalries. To be fair, it ought to be pointed out to their credit; "the development of rice zones with the power of the centre to procure surplus rice from it, the coordinated development of irrigation and power resources in each zone; the co-operation between the States of UP and MP in tackling the alarming dacoity problem in the area; the establishment of a common Reserve Police force in each zone; co-ordinated development of inter-state trade and above all the supply of doctors and engineers to the states in a zone".⁶⁶ The need for streamlining these councils

65. Ibid., p. 198.

66. Amal Ray, op. cit., pp. 137-8.

is highlighted by the recent trends in Indian federalism. The animosities endemic in inter-state relations, the phenomenal growth of parochialism and an increase in the parties preaching supremacy of their own region has created a dismal mosaic of national life. This process cannot be allowed to be continued as it is one of the primary factors hampering piecemeal evolution of Indian federalism on democratic lines. The Home Minister, being the Chairman of the Zonal Councils, has a special responsibility to see that these councils are not politically pressurised. It would be well-advised to concentrate initially on solving some of the burning problems relating to sharing of water, border disputes etc., which deserve to be closely watched by the Councils.

No sincere attempts have ever been made by the Home Ministry to evolve adequate machinery for the settlement of inter-state disputes. The problems confronting states are both political and economic and need to be tackled on these planes. The Constitution under Article 262 authorises Parliament "to provide for the adjudication of any dispute or complaint with respect to the use or control of the waters of or in any inter-state river or river valley". Article 263 empowers the President of India to establish "an inter-state council for inquiring into and advising upon disputes which may arise between states; (b) investigating and discussing subjects in which some or all of the states or the Union or one or more of the states have a common interest; or (c) making recommendations for the better co-ordination of policy and action with respect to that subject". Despite these provisions, recourse to this had not been sought except on two items, Health and Local Self Government. No inter-state council had been set up effecting consultations in any

major matter of national importance.

Under Article 262, Parliament has enacted the Inter-State Water Dispute Act, 1956, which, briefly, provides for; "a request by a state government to the Central Government for the reference of a dispute to a tribunal for arbitration; reference by the Central Government to such a tribunal if in its opinion the dispute cannot be settled by negotiations; the constitution of a tribunal consisting of one person from among judges of the Supreme Court or a High Court nominated in this behalf by the Chief Justice of India;... the exclusion of the jurisdiction of the courts once a dispute is referred to the Tribunal".⁶⁷ Commenting on this the ARC observes;

(i) the government has to refer a dispute to a tribunal only if, in its opinion, it cannot be settled by negotiations. Thus discretion is left with the Government of India whether to appoint a tribunal or not. The 1935 Act did not leave such discretion to the Governor-General; (ii) the award of the tribunals is binding. Under the earlier law the findings of the Commission were recommendatory, the final order being passed by government; and (iii) the jurisdiction of the courts was wholly excluded under the 1935 Act. It is only partially excluded under the existing law, that is, it is excluded only when a dispute is referred to a tribunal. Until then it is not excluded.⁶⁸

Moreover at present there is no time limit for negotiations, the Central Government can keep on making efforts at negotiations indefinitely without a contending State obtaining redress. This is in fact what happens and yet if a state does not ask for a reference to an Arbitral Tribunal its request is not accepted. If this legal loophole were to be plugged, the main source of indecision

67. Report of the Administrative Reforms Commission, Centre-State Relations, op. cit., p. 224.

68. Ibid., p. 225.

69

would be removed.

The machinery at present for the settlement of inter-state disputes include, firstly, the National Development Council, which meets occasionally and disposes matters pending with it in the most cavalier manner. Secondly, the Food Ministers' conferences have also proved to be of very little value, as not a single decision on an all India level to solve the ticklish food problem had been taken. Neither a programme could be chalked out to cut down the artificial scarcity, due to hoarding and blackmarketing. The peculiar feature with these conferences is that at times rather very often agenda of the meetings is circulated a day before the commencement of the conference. Thirdly, there are Labour Ministers' conferences, which, besides, discussing problems relating to labour also ponder over the special problems of law and order such as gheores etc. It would, however, be a folly to expect a well-thought out scheme from the conference owing to the narrow limits in which they take place. Fourthly, the National Integration Council was constituted after the Jabalpur disaster in 1962. It has become a fashion with the Ministry to call this council only when there is large scale massacre in what is popularly called as communal riots. It was convened for the first time in 1962 to evolve methods to combat the growing menace of communalism. Except enchanting sermons and solemn appeals, nothing substantial could be achieved of the Council. The recommendations of the Council were kept in cold storage till 1967 when the Council overnight became over-enthusiastic to meet, after the Meerut tragedy. For the third time the NIC was

69. Ibid.

called after the Ahmadabad killings. A brief analysis of its failures and achievements are given in the following chapter. Suffice here to mention that the NIC also proved to be futile in solving inter-state and national problems. Finally the Chief Ministers' conferences also serve as a vehicle to iron out inter-state animosities. Commenting on the Chief Ministers' conference the ARC observes;

Till lately, it appears, there was no procedure to keep even the Prime Minister informed of these conferences. Latterly the Prime Minister asked her cabinet colleagues to consult her whenever they propose to call such conferences. But even so, not enough systematic arrangement has been made. As Chief Ministers are concerned with all subjects, their conference tends to suffer from defects besides those of short notice and the late dispatch of the agenda. Conferences are called by different ministries at short intervals, resulting in inconvenience and even waste of time.... There is further more, no co-ordination regarding follow-up action. Thus the conclusions of the Chief Ministers' conferences are circulated to the ministries or officers concerned for taking necessary action. Neither any specific ministry is made responsible for seeing that follow-up is done in all ministries, nor, in some ministries, is any officer, or section made responsible for such co-ordination within the ministry. 70

The ARC suggests, "the need here is for a single standing body to which all issues of national importance can be referred and which advise on them authoritatively after taking all aspects of the problem into account. The advantage of a single body is that every problem can be viewed by it in the perspective of the whole. This integrated look, necessary in fashioning basic policies of national importance, is missing in the dispersed system operative at present. The body should be a standing one and should meet at regular intervals so that all participants, armed with foreknowledge

70. Ibid., pp. 299-300.

of its meetings can take effective use of the forum. Shortcomings in conferencing procedures could then be eradicated, because with a standing body meeting at prescribed intervals, adequate supporting machinery would have to be devised. The body must be so organised that both the Centre and the States find feasible to refer issues exercising them to it. Representation on it naturally has to be at the highest level for that level alone can issues be pronounced upon after taking a comprehensive and unsegmented view.⁷¹"

One of the important factors responsible for these Centre-State and inter-state bickerings is the localistic and regional outlook of the state leadership. The regional leaders are constantly under the impression that by raising the regional boggies they would be playing to the gallery and stabilising their position and improving their political image. They compete with each other in emerging as heroes by raising diverse issues which they make out to be good for the prospects of the state politically, economically, linguistically, culturally etc. etc. They are not so much concerned with the substance in their claims as with the explosive and agitational potentialities of the issues which they parade, day in and day out, to improve the prospects of their leadership in the state and incidentally their bargaining position with the Centre. Much of the centre-state and inter-state tensions are the outcome of this psychology of the state leadership which is both harmful and dangerous.

71. Ibid., pp. 300-1.

CHAPTER V

PROBLEM OF LAW AND ORDER — POLITICAL AND ADMINISTRATIVE ASPECTS

Significance of Law and Order

Law and order is the first symbol of a good government. It is the precondition of political stability, administrative efficiency and economic advancement. The entire Social Contract theory of John Locke evolves around it. He says:

The defect of the state of Nature lies merely in the fact that it has no organisation, such as magistrates, written law, fixed penalties, to give effect to the rules of right. Everything that is ever right or wrong is so eternally, positive law adds nothing to the ethical quality of different kinds of conduct but merely provides an apparatus for effective enforcement. In the State of Nature every man must protect his own as best as he can, but his right to his own and his duty to respect what is another's are as complete as ever. 1

He justifies even right to revolt, if the government fails to protect the rights of citizens, the right to life, liberty and property.

Law and Order are complementary to each other. Order can be restored only through strict and impartial enforcement of laws. In the absence of effective machinery to apply laws and maintain order in the state, there will be anarchy and confusion or to put in the words of Thomas Hobbes, 'war of every man against everyman' and the life of man would be 'solitary, poor, nasty, brutish and short'. The mere presence of laws and a constitution are not enough unless they are properly implemented. Again to quote Thomas Hobbes, "covenants without the sword, are but words, and of no strength to

1. George H. Sabine, A History of Political Theory (Oxford, New Delhi, 1961), p. 526.

secure a man at all".² He further holds, "the bounds of words are too weak to bundle men's ambitions, avarice, anger and other passions, without the fear of some coercive power."³ Without effective authority to enforce laws and maintain peace there can be only lawlessness, which is an anathema to all progress.

The need for law and order in a state is to enable the people to pursue their avocations in peace and in the confidence that he would be allowed to enjoy the fruits of his labour without being handicapped by the vested interests. In other words law and order is a way of living, how the people live in an atmosphere of peace and tranquillity and how they are allowed to live. Lawlessness implies the failure of administration and the triumph of mobocracy and the rule of the jungle at the expense of democracy, rule of law and the orderly functioning of administration. It ought to be noted that even a slight breakdown of law and order has its repercussions, directly or indirectly, on the economy of the State. Such examples are not difficult to find in India. Turning one's own eye at the headlines of various newspapers one finds sheer lawlessness and anarchy, which reminds us of the Hobbesian State of Nature. Frequent outbursts of violence, agitations, strikes, bandhs, gheraos and lockouts etc. have clouded the life in independent India and has resulted in the flagrant violation of right to life and liberty, besides causing colossal wastage to public money.

The significance of law and order in developing nations where democratic traditions have not yet become common with people, is of even greater importance. The plight of India, in this regard is very obvious. Murders, thefts and terrorism have become the order of the

2. Levithian (Oxford, 1909), Chapter 17.

3. Ibid., Chapter 14.

day especially in West Bengal. The people have also accustomed to such breaches of liberty and property that incidents like burning of buses, raids on public institutions and offices, discrimination against a group of people are no longer looked upon with distrust. "The burning of a Harijan boy in an Andhra Village, the shooting in cold blood by a UP Zamindar of a Harijan youth in the presence of police officers",⁴ and such other inhuman activities reveal the disquieting nature of law and order position. What is even worse is that in some parts of the country even the security of law and order machinery is not guaranteed. Attacks on policemen and raids on police stations are too numerous to be cited. Such instances of violence and the state of constant terrorism is a patent challenge to democracy and orderly progress and it is in this context that the problem of law and order assumes far greater significance in under-developed polities.

To put in the words of Dr. Zakir Hussain, "Law and order are inseparable terms, that the maintenance of law and order must command absolute priority; that the rule of law must prevail; that law and order must comprehend the safety of all without any distinction or exception whatsoever; that the maintenance of law and order rests upon the sanctions of force; and that the civil authority is supreme."⁵ The establishment and maintenance of peace requires law, precise and definite. The role of law-enforcing agencies extends to the protection of law-abiding citizens from anti-social and other mischief-

4. C.N. Chittaranjan, "State of the Republic", Mainstream (New Delhi), Vol. VIII, Nos 21-22, Republic Day Issue, 1969, p. 14.

5. S.S. Khera, Foreword, District Administration in India (Asia Publishing House, New Delhi, 1964), p. viii.

making elements. The need for an impartial judiciary for issuing writs and inflicting penalties and punishments upon the culprits is also equally necessary. Rule of law is the sine qua non of a sound administrative policy. As has been rightly observed by David H. Baylay:

The establishment of Rule of Law is essential to economic and social progress. Social stability is the sine qua non of national advancement and, moreover, of meaningful individual freedom. The instrument for carrying out the wishes of all the people for the amelioration of their lot is the democratically elected Government. The instrument must be responsible to all the people, not to just to one or another set of special interests. Within the limitations of the freely adopted Constitution, the Government must see to it that the social progress of masses is not frustrated by the narrow prejudices of the few. To serve this end, it is often necessary to restrict the anarchical freedom of some individuals in order to ensure the fulfilment of other forms of freedom to a greater number. Regulatory actions of this generic type are portrayed as arbitrary repression, which in a generic way they certainly are, but no society ever become orderly and purposive without this element of self-imposed restriction. 6

Law and order, primarily constitutes a state subject, but the Central Government has an obligation under Article 355 of the Constitution to protect every state against external aggression and internal disturbance and to ensure that the government of every state is carried on in accordance with the provisions of this Constitution, failing which the Central Government can intervene and declare Presidential rule. The overall responsibility of maintaining law and order rests with the Ministry of Home Affairs. Also it is the Home Ministry alone that can deploy armed forces in any state with a view to help the state administration in the maintenance of peace

6. David H. Baylay, Preventive Detention in India (Mukhopadhyay, Calcutta, 1962), p. 57.

and order. Towards this end, the Ministry is assisted by the Central Reserve Police, Intelligence Bureau and the Special Police Establishment. The Political Department of the Ministry collects information on every aspect of India's political life and keeps the Home Minister informed of what is going on in the country. The nature of Indian federation has also made the role of the Central Home Ministry more significant in the governance of the country. Unlike the American Constitution, the Indian Constitution leaves the residuary powers to the Centre. "It is the Home Ministry that exercise many such 'residuary functions' on behalf of the centre".⁷

Maintenance of law and order in a country dominated by fissiparous tendencies ready to spark off violent agitations is undoubtedly a difficult task. The growing regional potentialities, the language riots, the communal flare-ups, a caste-ridden politics present a dismal mosaic of national life. All these problems need to be carefully scrutinised before any programme of law and order is chalked out. The task is greater, the machinery to prevent lawlessness obviously, ought to be effective. The insertion of provisions pertaining to secularism has also opened up new dimensions in the field of law and order. As a result of the adoption of secularism as one of the ultimate goals of state policy the functions of government and the responsibilities of administration have increased manifold. "First the State reserves to itself the right of legislating about all secular activity, associated with religion. Secondly, it also reserves the right to legislate for social welfare and reforms and for throwing open Hindu public religious institutions to all

7. Walles Hangens, After Nehru Who? (Rupert Hart Davis, London, 1969), p. 116.

sections of Hindus even though such a legislation may interfere with religious beliefs or practices. Article 26 deals with corporate religious freedom. Every religious denomination has a right to establish and maintain institutions for religious purpose and to manage its own affairs in matters of religion. But the right of denomination to administer the property of the religious institutions is made subject to laws made by the State⁸. In a country like India which is very often threatened by irrational norms, the implementation of secular policies inevitably breed problems of law and order. Lack of Pan-Indian ethos in the country has further complicated matters. It is in this context that the following pages attempt to analyse the factors detrimental to peace and tranquillity and the havoc caused by the frequent breakdown of law and order, the various aspects of law and order and the achievements and failures of the Ministry of Home Affairs in combating the ever-present and ever-growing lawlessness.

An Evaluation of Law and Order Situation Since 1947. With Special Reference to Communal Riots

India attained independence in August 1947 which was preceded by mass-killings, inhuman atrocities, cruelties and utter lawlessness on both sides of the border which made every citizen hang his head in utter shame. Its aftermath was even worse, when we have had to witness most obnoxious killings in Punjab and the reprisals in the form of loot, arson and murders in Delhi, Bihar and other places. Time and tears failed to heal the wounds created by mutual suspicion,

8. M.C. Setalvad, "The Secular State in India", Secular Democracy (New Delhi), Vol. 1, No. 9, August 1968, p. 20.

distrust and destruction of lives and property. It, however, does not mean that the governments failed to visualise the consequences of the unfortunate division of the sub-continent. Both Muslim League and the Indian National Congress pledged to protect the lives and properties of the minorities in their respective states. All these guarantees of protection of lives and liberties of citizens were forgotten by the people of both the countries immediately before and after independence. The long-awaited independence came amidst joy and sorrow, disgust and desire and hope and disappointment. Referring to Delhi, Maulana Azad observes;

The whole city was in a state of tumultuous joy. Even the pangs of partition were for the moment forgotten. Millions from the city and the surrounding countryside assembled to hail the advent of freedom. The flag of free India was to be hoisted at 4 p.m. In spite of the burning August sun, millions gathered and in fact had been waiting in the gruelling heat for hours. The crowd was so great that Lord Mountbatten could not go out of his car at all and had to make his speech from it. 9

This is not the whole truth. Not all people celebrated independence with the same zeal. On that very historic day, "in the bazar quarter of Amritsar, the Sikhs rounded up a large group of Muslim girls and women, stripped them off their clothes, and then forced them to parade in a circle before the jeering crowd. Then a number of the choicest and youngest were dragged off and raped repeatedly. The clothes were chopped down by Kirpans, and out of thirty of them only half a dozen reached the sanctuary of the Golden Temple alive".¹⁰

The law and order position continued to drift. Violence soon engulfed the capital. Maulana Azad, an eye witness to the unfortunate

9. Abul Kalam Azad, India Wins Freedom (Orient Longmans, New Delhi, 1959), p. 209.

10. Leonard Mosley, The Last Days of British Raj (Jaico Publishing House, Bombay, 1961), p. 278.

incidents, lamentably writes:

It was learnt that in the East Punjab, Hindu and Sikh mobs had attacked Muslim villages. They were burning houses and killing innocent men, women and children. Exactly the same reports came from the West Punjab. The whole of the Punjab, East and West, was becoming a graveyard of destruction and death. Events followed in quick succession. One East Punjab Minister after another came rushing up to Delhi. They were followed by local Congress leaders who were outside the Government. All of them were horrified by the developments that were taking place. They were also stunned by the magnitude of the carnage and said in despair that perhaps nothing could stop it. We asked them why they had not called upon the military. In despair they said that the troops stationed in Punjab were no longer reliable and not much help could be expected from them. They demanded that Military help should immediately be sent to Punjab from Delhi.... There were no disturbances in Delhi, in the beginning, but with the country all round aflame, with such a murderous upheaval, it was not possible to deplete the small military reserve held in Delhi. We decided to send for troops from outside but before they could arrive, trouble reached the Capital. Trouble was not confined to the refugees or even to the general public. Even the areas where only Government Servants lived were involved. When the reports of massacre in the West Punjab reached Delhi, Muslims in the city were attacked by mobs of unruly men. Some Sikhs took a leading part in organising these murderous attacks in Delhi.... The attitude of the Army now became a critical issue. Before partition, the Army had been free from communal hatred. When the country was divided on communal basis, communal virus entered the Army. The majority of troops in Delhi were Hindus and Sikhs. In a few days it became clear that it might prove too great a strain on them if strong action was to be taken for the restoration of law and order in the city. We therefore took measures to bring more soldiers from the South. They had not been affected by the partition of the country and retained their sense of soldierly discipline. The soldiers of the South played a great part in bringing the situation under control and restoring order in the capital. 11

The mass killings and atrocities continued notwithstanding the pledges of both governments. The outward manifestations of both governments paid handsome dividends which history shall never forget. The law and order machinery failed to raise to the occasion and what

11. Abul Kalam Azad, op. cit., p. 210.

was worse was that there was want of confidence even in the law and order machinery. To cite the Maulana again;

Several Special Magistrates were appointed to maintain law and order and restore peace. I regret to say that the selections were not always very happy and that some of these Magistrates failed in their duty. I remember distinctly the case of one Magistrate to whom a Hindu member of the Congress came for help. He reported that there was danger of attack on a Muslim locality and some Muslim families were living in fear of death. This Magistrate, instead of taking action, accused the Congressman for that he called his lack of feeling. He said that he was surprised that a Hindu should come to help Muslims. ¹²

The nine months preceding partition is an era of violence. During this period between fourteen and sixteen million Hindus, Sikhs and Muslims were forced to leave their homes and flee to safety from blood-crazed mobs. In the same period over 600,000 of them were killed. If they were children, they were picked up by the feet and their heads smashed against the wall. If they were female children they were raped. If they were girls they were raped and then their breasts were chopped off. And if they were pregnant they were disembowelled. ¹³ The tragic drama brought 600,000 dead, 14,000,000 driven from their homes, 190,000 young girls kidnapped by both sides, forcibly converted or sold on the auction block. ¹⁴

Sardar Vallabhai Patel was the then Minister for Home Affairs as well as the Deputy Prime Minister of India. "As the lists of murder and arson grew longer, Gandhiji sent for Patel and asked him what he was doing to stop the carnage. Sardar Patel tried to reassure

12. Ibid., p. 211.

13. Leonard Mosely, op. cit., p. 279.

14. Ibid., p. 281.

him by saying that the reports which he was receiving was grossly exaggerated. In fact Patel went to the extent of saying that the Muslims had no cause for complain or fear¹⁵. Surprisingly enough, the Home Minister instead of galvanising the entire law and order machinery came out with the theory "that deadly weapons were recovered from the Muslim localities in the city. By the order of the Home Minister, these were brought to the government's House. When we assembled for our daily meeting, Sardar Patel said that we should first go to the anti-chamber and inspect the captured arms. On our arrival we found on the table dozens of kitchen knives, with or without handles and iron spikes which had been recovered from the fences of the old houses and some cast-iron pipes. According to Sardar Patel, these were the weapons which the Muslims of Delhi has collected in order to exterminate the Hindus and the Sikhs. Lord Mountbatten took out one or two of the knives and said with a smile that those who had collected this material seemed to have wonderful idea of military tactics if they thought that the city of Delhi could be captured with them¹⁶". This was how the Home Minister of India acted in those critical years.

The Hindu-Muslim tension soon mounted to high proportions. Even the satyagraha of Gandhiji failed to pacify the mischief-mongers, who were hell-bent to add to the tension. The Home Minister failed to instil a sense of confidence in the minorities, the bounden responsibility of protecting the lives, liberties and properties of citizens were pathetically neglected. The satyagraha

15. Abul Kalam Azad, op. cit., p. 214.

16. Ibid., p. 215.

of Gandhiji to normalise the Hindu-Muslim tension was an eye sore to the Hindu Mahasabha and the RSS. A vicious propaganda was waged against Gandhiji that he was the enemy of Hindus. Despite all this no precautionary measures were taken to guard the Father of the Nation during his prayer meetings. The miscreants went even to the extent of throwing a bomb in his prayer meetings. Even this hint went unnoticed and did little to stimulate any positive action, worth the name, on the part of the Home Ministry; the apathy and indifference on the part of the law and order machinery, right under the nose of the Central Home Ministry, resulted in the assassination of Gandhiji and the end of an era in the history of independent India.

The communal carnages were hitherto believed to be the outcome of the treacherous policy of Divide and Rule of the British. With the withdrawal of the British and the subsequent partition of the country it was thought that communalism will die its natural death. But the events which followed belied all such hopes. Partition, instead of solving the communal problem had cropped up more problems, for both countries, be it the refugee problem or water dispute or the border disputes. A deep rooted animosity developed between the two nations, which diverted a substantial portion of their budget towards defence preparations at the expense of development programmes.

The plight of minorities in both countries was miserable. A section of population of the majority community on both sides of the border looked upon the minorities with sinister designs, ready to attack on the slightest pretext. The repeated pledges of the Indian Muslims to adjure communal politics and be the loyal citizens of India (Lucknow Conference towards the end of 1947) failed to convince a section of the majority community including the RSS-oriented

officials. The Central Government not excluding the Home Minister, on the contrary patronised the RSS and made its access to the Government offices easier, of which more later. The ban that was imposed after the assassination of Gandhiji was lifted. And "Guru Golwalkar whom Pandit Nehru would not admit on his premises was received by the Sardar in his drawing Room. True to the pattern, Mr. Lal Bahadur Shastri, in his own days, placed him on the pedestal. The Army, the Navy, the Police and the various forces had no place for a Muslim. Even the industrial houses, not excluding American and British, under Sardar's pressure, closed against them. Hyderabad, unlike every other native territory, became Andhra Pradesh. The Police Action, never liked by Pandit Nehru, drove the Iron deep in the soul of every Muslim".¹⁷ Communalism was thus given respectability by the first Home Minister of Democratic India, which time and tears miserably failed to eradicate.

The Evacuee Property Law was used to deprive Muslims of their property on a mass-scale; whatever the provisions of the law, anyone could be described as an intending evacuee and the entire property of his family taken over by the custodian. As a result, communal riots broke out here, there and everywhere, sometime right in the front of police stations, and the police and the local authorities did not intervene till the Muslims had been given a good beating and their property set to fire. Even after police intervention, the Muslims who were the victims in the disturbances were singled out for repression; where the local authorities are more fair-minded,

17. S.P. Sinha, "The Task of National Integration", Secular Democracy, August 1968, p. 29.

parity between the Muslims and the Hindus was maintained in the arrests, even if the Muslims were the sufferers in the disturbances.¹⁸ The Ministry of Home Affairs was a passive spectator to all this. This was the first phase of trials and tribulations in the history of independent India.

By and large the period between 1950 and 1960 was little promising as far as law and order situation was concerned. The communal disturbances disrupting the normal functioning of administration, undoubtedly were in the swim but the proportion was definitely a smaller one. In 1954, there were 82 communal riots and by 1960 the number fell to 26. The year 1960 opened up a new era of violence in the country. The ghost of communalism again reappeared; Jabbalpur and Western UP fell prey to it. During the years 1962 and 1963 there were about 123 communal riots in the country. The number shot up in 1964 and there was large scale violence in the states of West Bengal, Bihar and Orissa as a corollary to the ghastly violence in East Pakistan. The year 1966 posed new dimensions in the communal problem; the states of Andhra Pradesh and Maharashtra, which were till then immune from communalism, became the worst victims. Communal violence in the years 1968 and 1969 displayed a continuous upward trend. There were "220 riots in 1967 (excluding the Ahmedabad killings) and 327 in the first six months of 1968".¹⁹ The number of persons killed in 1967 alone was 307 and in the first six months of 1968 the number exceeded the 1967 figure.²⁰ The following paragraphs

18. Grish Mathur, Communal Violence (New India Press, New Delhi), p. 7.

19. Ibid., p. 13.

20. Ibid.

attempt to examine some of the communal riots, which are a source of lawlessness and the role of the local administration in averting the situation and the general responsibility of the Ministry of Home Affairs in prescribing the necessary instructions and initiating timely action to save the people from these artificial calamities.

The Jabbalpur riot once again brought to surface the pathetic picture of the days immediately preceding and following independence in 1947. The press, especially the Jan Sangh quarter, which has a vital role in averting the situation by giving a correct version without their reports being emotionally surcharged, played havoc with the situation. The mouthpiece of the Jan Sangh, the Organiser, spared no effort in publishing exaggerated and highly provocative statements, to rouse the passions of one community against the other. For instance, it came out in its February 27, 1961 issue that "... Jabalpur should have reacted strongly to the rape of an innocent girl showed that our people are basically in good health. Had they failed to organise a hartal, and quickly pocketed the insult, it would have been a case of social ill-health. It is only healthy bodies that react. It is really assuring that the people are quite awake, Panditji's anaesthetics notwithstanding...." Such statements were substantiated to justify the atrocities committed in Jabalpur. The press never cared to expose the ring leaders nor made an attempt to denounce violence, murder and arson. Had the Press corrected and verified rumours, hearsy or influential gossip, the tragedy would not have reached to such magnitude. In such contingencies the Home Ministry ought to have intervened to verify the rumours and display the facts. Stringent action against street journalists could perhaps be one remedy. The Home Ministry owes the administration an official

verdict to such allegations so that public fears and apprehensions are allayed. When rumours of such provocative nature are afloat, public opinion is naturally agitated and this was what happened in Jabalpur, but it would be futile to let excitement run riot or seek to disrupt law and order.

The year 1964 is a dark spot in the history of India, when large scale riots took place in many parts of the country. West Bengal was badly affected by the communal venom and it also spread to the industrial areas of Rourkela and Jamshedpur. The causes leading to this volcanic outburst was connected with the stories narrated by East Pakistan refugees in the trains. And "the anger over happenings in East Pakistan was exploited by an organised communalist gang which had been trying in wait for an opportune moment to pronounce upon harmony of life.... Everywhere rumours were spread that Muslims would attack, that they had been put in camps because they posed a threat to the rest of the population, that women of a particular age group were not allowed to come away from Pakistan. People, particularly in the Adivasi areas, were exhorted to rise up in arms in defence of their religion which was possible only by putting the fear of God and retaliation into the hearts of 'Pakistanis'.... Most of the weapons used during riots were manufactured in the Tata Factory at Jamshedpur. Whereas it makes for an investigation about similar activities in other steel factories. One question immediately arises; were the weapons manufactured in the Tata Factory with the connivance of owners or it could be done because of their negligence. In Jamshedpur area, the telephone service is controlled by the Tata Company so that the negligence of the Company can anytime paralyse the machinery of law

and order".²¹ The moot point in this regard is as to what prevented the Ministry of Home Affairs to conduct an enquiry of the Tata Company of which it was openly alleged that it was involved readily in the manufacture of lethal weapons? Whatever might have been the immediate reasons leading to violence to such magnitude, but once a riot breaks out, it becomes the responsibility of the District administration to bring the situation under control, failing which the Ministry of Home Affairs can intervene as it is under the constitutional obligation to protect every state against internal disorder. The law and order machinery failed to cope with the problem in the initial stages, as a result, the infection spread to ever widening areas making it difficult for the district administration to handle the matter effectively. The dereliction of duty on the part of police forces and magistracy allowed the situation to take its own turn. Arms and ammunitions were discovered in some of the houses but no penalties were inflicted upon the guilty, which, in fact, gave an official signal to carry on with their nefarious designs. G.L. Nanda, the then Minister of Home Affairs, himself admitted in Parliament²² the fact of the discovery of the manufacture of arms and ammunitions. The very fact that there was stocking of arms by individuals reveals that people have no confidence in the law and order machinery that they will come to their rescue in case of flare-ups and attacks by the culprits and the trouble-makers. The Ministry of Home Affairs ought to have taken stringent action

21. Subhadra Joshi, "No Room for Complacency", Mainstream, Vol. II, No. 32, April 11, 1964, pp. 13, 21.

22. For details see, Lok Sabha Debates, Vol. XXIX, No. 50, April 15, 1964.

against the district officials, in the first place for allowing the situation to deteriorate and secondly its inability to cope with the situation in the initial stages and thirdly its indifference towards the manufacture of deadly weapons in private houses. G.L. Nanda, however, convinced the House that the Ministry and the Government will do "everything possible about it".²³ Exemplary punishment would have been a greater deterrent to communal violence than mere political speeches, no matter how eloquent they might have been.

Jabalpur, Rourkela and Jamshedpur failed to provoke the Ministry to evolve suitable remedies to wipe out the evil of communalism. It is the function of the Ministry to constantly review the factors leading to such disasters. Inaction and wishful thinking are inexcusable as that had had led to colossal waste in terms of lives as well as property, public and private alike. It ought not to be forgotten that a mere inter-community incident does not necessarily become a communal riot unless the preconditions exist. The riots at Jabalpur and other places were preceded by even more dreadful cases of arson and loot. The police at best can only contain violence, but its eradication, tooth and nail, requires a determined and energetic administration. And the Home Ministry failed to provide it. The continuous chain of communal riots shows beyond doubt that the weapons used, the localities selected, the victims pinpointed and above all even the strategy of these carnages are almost similar. It implies a set design and similar pattern that was employed by the rioters in the most orderly and systematic manner.

23. Ibid.

Ranchi Riots

Riots broke out in Ranchi on August 22, 1967. Brickbattling on the anti-Urdu agitators procession was believed to have triggered off the danger. The facts, however speak differently. Inflammatory pamphlets published by one Vijay Ranjan Choudhry, Secretary, Youth Congress and by the Jana Sangh were circulated about ten days before the actual tragedy, which branded Indian Muslims as pro-Pakistanis. The local administration was in the know of all these activities. "On 15-8-1967, a leaflet in 15000 copies printed at 'Cheap Press' of Ranchi under the signatures of one Vijay Ranjan styled as ex-secretary, Ranchi District Student's Congress was circulated in and around Ranchi town.... It called upon the people to rally against Urdu and Muslims and to demonstrate on the 22nd August on this issue. It further directly called upon the Hindus to resort to violence in order to resist Urdu.... On 21st August, an anti-Urdu Day was organised by the Jan Sangh at Ranchi and wide propaganda was made in town along with demonstrations which added fuel to communal frenzy".²⁴

²⁵
The leaflets were circulated on August 15, 1967 by Ranjan

24. From the Memorandum submitted by the Delegation on Behalf of the Communist Party of India, Ranchi, September 6, 1967. Published in Ranchi Riots (S.V. Committee, Albion Press, Delhi, 1967), p. 12.

25. The leaflet reads as follows;

"Come up ! To fulfill our dream, to stop Urdu getting second place, to foil their plot come together on 22nd August at 1 p.m. at Shaheed Smarak (place), opposite district school, there we roll in lacs and demonstrate in the city and will reach at 3 p.m. before the Deputy Commissioner's office. We will demand as under;

We will not allow Urdu to be the second language of Bihar under any condition. If Government under its obstinacy do so there will be mass uprising and government will be responsible for the consequences.

Those who are plotting to set up Urdu as second language should be arrested and dealt with like traitors !"

quoted by; The Report of the Commission of Inquiry on Communal Disturbances (Ranchi-Hatia), Government of India, 1968, p. 151.

Choudhry and informed the police that he would take out a procession on August 22, 1967. The police arrested him but his well wishers were allowed to go scot free. The District authorities themselves invited the trouble by allowing them to go in their own way. After all a procession cannot be taken out by one single individual in loneliness, and this thing did not catch the intelligence of the intelligence net-work. The procession was taken out, as scheduled. No security measures were taken to prevent provocative acts by the processionists. "At Ratan Talkies brick-bats were exchanged between the processionists and some other goonda elements as a result of which the demonstration thinned out and dispersed. Almost synchronising with these events one Shadilal was stabbed at Konka Road near Ratan Talkies who subsequently died in the hospital".²⁶ Very soon the communal grape-vine stirred and cast its baleful shadows all over the town resulting in arson, loot and murders. What was worse was that even the mosques were not spared by the hooligans, and the police watched the situation very indifferently and did not intervene presumably for fear of the wrath of the majority community after the riot. The Jama Masjid which was only 100 yards from the police station was damaged. The mysterious absence of the police force from 3 p.m. to 8.30 p.m. on August 22 from the main road in the troubled area creates serious doubts with regard to their honesty and integrity as custodians of law and order. There was complete black-out in the main road despite the repeated requests made to the Ranchi Electric Supply Company for making lighting arrangements.²⁷ The

26. Ranchi Riots, op. cit., p. 13.

27. Ibid., p. 14.

trouble started on 22nd and it was clear that the situation got out of control from the local police officers. The Army was not called till 24th but even then killings continued till 27th, the curfew notwithstanding. Even the Army was reported to have sided with the rioters.²⁸

The tragedy of the Medical College could have been averted had the Principal, professors, the magistrates and the police deputed there been sincere. It would be significant to note that in Medical College, the Principal who was informed of the tension in the campus and conspiracy hatched against the Muslim staff and students, brushed aside the apprehension of Muslim students as "rubbish" and left the campus for the town. There was a magistrate with police force present. But when the Muslim students were isolated in Conference Room on plea of safety, he left the place with police to allow miscreants to attack helpless Muslim students and the house surgeons. Is it not abetment in crime? After the tragedy when some of the culprits arrested, they refused to take care of patients and went on strike. It was only after the Police Minister threatened with action that the college staff resumed duties. This shows how deep-rooted is the poison in the minds of Doctors and future Doctors of the country.²⁹

After the riot as usual mild doses of secularism were generously poured in by the Minister of Home Affairs, Y.B. Chavan, on his tour to the riot affected areas. At Ranchi on August 29, he admitted that there was an "organised hand" behind the ghastly tragedy.

28. For details see, Memorandum submitted on behalf of Muslims of India to the Government of India, published in Ibid., p. 7.

29. Ibid., pp. 8-9.

But curiously enough no action was taken against those police officers who sided with the culprits. They ought to have been treated on the same par as other criminals. No enquiry was held to investigate the mystery behind the absence of police on August 22, at 4.30 p.m. when the riot broke out. The complacency in taking precautionary steps in Dhurva and Hatia after the riot in Ranchi was effectively glossed over. The presence of mysterious personalities like Rudra Pratap Sarangi during the riot went unheeded by the Home Ministry. Neither the Central Government nor the State Government felt it necessary to find out the hecatombs responsible for the blood-hurricane that hit Ranchi hard.

It is not that the riot broke out all of a sudden. The anticipation of trouble was there in Ranchi. There were agitations and unrest in the town over the question of Urdu and the authorities were not unaware of it. In fact, on August 5, 1967, a circular was sent to all Superintendents of Police, Bihar, by the CIS, Special Branch, Bihar, stating:

Hindu communal organisations and political parties are opposing this proposal (of Urdu being made the second official language of the State) whereas Anjuman-i-Taraqui Urdu etc. are pressing for the acceptance of the same. Since the agitation may reach such a sharp edge, apprehension of communal troubles cannot be ruled out. You are, therefore, requested to alert all officials under you to be vigilant and collect intelligence against any evil design so that trouble is nipped in the bud. Necessary information may kindly be sent to this office as well. Special Branch Officers have also been suitably instructed in this connection. 30

It is said that the Superintendents of Police, the District Magistrate were newly posted and they have had no apprehension of communal

30. Report of the Commissioner of Inquiry on Communal Disturbances (Ranchi-Hatia), op. cit., p. 82.

mischievous. But why their predecessors did not leave such a note is mysterious.³¹

To inflict artificial confidence in the affected, the Dayal Commission was appointed. "The Commission's manner of discussion is a peculiar one. 'One of the Ministers of the UP Government' is quoted than 'another' and yet another', no names were given of these worthies to enable one to evaluate their hypothesis in the light of their credentials. Other witnesses cited also remain anonymous, including one representing 'a party', which, we are not told. However, the District Magistrate, while rejecting the possibility of prior planning opined that "once the riot started, political parties might have taken advantage of the situation". Which of them in the actual situation? But, then, he had to face hardly any cross-examination.... The Commission is of the opinion that, like Topsy, the riots just grew. They developed as a result of brickbattling. 'An allegation has been made that the incidents at Hatia were organised and planned by the members of the RSS and the Jan sangh. There is no evidence about any such general organised attacks by the members of these bodies forthcoming though allegations had been made of private meetings at certain places at the house of certain persons said to be RSS and Jan Sangh. Even if it is true, private meetings at certain places would not suffice to establish the allegations against these organisations'. Private meetings, technically speaking, may not be organisational meetings but is this a correct approach in the circumstances? At least the Commission might have investigated and laid to rest, if it were false, a specific allegation freely

31. Ibid., p. 85.

made then that the Jan Sangh and the RSS met in camera on site 5 of section 2 in the HEC on August 22 to plan their strategy. In groups of 5 to 6 they spread themselves loose in the colony and the next day a barrage of propaganda was let loose".³² The Commission rules out prior planning but points out "all the same the possibility of some groups working against the minority community in Hatia after the happenings in Ranchi on the 22nd August cannot be ruled out. "Whenever there is a possibility of taking communal colour, it did take that colour and created a law and order situation. It adds 'the anti-Urdu agitation and the activities of Vijay Ranjan were in the circumstances, sufficient to develop into such communal tensions as could lead to serious communal disturbances'. This is a fair conclusion and if the Commission has only addressed itself to this direct cause of the riots and probed danger into the kind of the agitation which led to the riots it "might have" arrived at the truth. But that was not to be".³³

The casual manner in which the Raghubar Dayal Commission dealt with this serious problem is most outrageous. "The Dayal Commission Report", has has been rightly observed, "suffers from the fatal defect that it is more or less a balancing feat and not an earnest attempt to trace the root causes; this is perhaps because of the composition of the Commission and the procedures it adopted. The methods adopted for the trial of a group of persons facing charges cannot obviously be useful in dealing with a situation in which one community lives in constant dread.... The Dayal report is unsatisfactory as a guide

32. A.G. Noorani, "The Ranchi Riots, Inquiry Report", Radiance (Delhi), Vol. VI, No. 48, June 15, 1969, p. 12.

33. Ibid.

for future action precisely because it does not deal with the deeper causes as well as the powerful organisation which brought about riots not only in Ranchi but in many other parts of the country also³⁴. The Commission finds the root cause for the frequent outbursts of riots in the suspicion existing between India and Pakistan. That might hold some conviction. But is that the only cause leading to such flare-ups? Does the Commission mean to suggest that if relations between India and Pakistan do not improve, the riots will continue? The answer is self evident. The crux of the matter is that the communal problem, a purely man-made problem, is being treated as wrath of God for the past sins of both communities on both sides of the border, for which no one, from the Home Ministry down to district authorities is responsible.

Meerut Riots

The Meerut tragedy is largely believed to be the inevitable result of Sheikh Abdullah's visit. But the mere visit of the Sheikh would not have provoked such all-round violent disturbances. Meerut city is, in fact, a haunting ground for champions of Hindi and Cow protection and militant Hindu nationalism. Moreover the city has sizeable population of refugees from Pakistan. The riot was definitely pre-planned. It did not break instantaneously. The Hindu Mahasabha, long before the visit of the Sheikh, had hinted at a black-flag demonstration, and towards that object clandestine posters and obnoxious leaflets had been distributed. The city was fully surcharged with the communal virus. The District officials as well as the intelligence net-work of the Ministry of Home Affairs

34. C.N. Chittaranjan, "Communalism; Total Combat, Not Halting Action", Mainstream, Vol. VII, No. 9, November 2, 1968, p. 9.

hardly took any notice of the events, or else they were complacent about the ill-effects of propaganda exhorting violence. In view of the tense situation prevailing in the city, the Chairman of the Reception Committee wrote to the Deputy Commissioner of Meerut on January 27 requesting him to make proper security arrangements; even at the eleventh hour General Shah Nawaz asked for an assurance from the City Magistrate on Duty that the procession, the Kashmir Bachao Morcha, would not come into clash with the organisers of the meeting.³⁵ The assurance was promptly given.

The Jamat's conference was announced to begin at 6 p.m. outside the compound of the Faiz-e-am College; an important local educational institution. About 4.30 p.m. the so called Kashmir Bachao Morcha began its announced meeting at the Shahid Memorial situated within 100 yards of the College compound. From a slow trickle, the gathering swelled to between 150 and 200, thanks to the fiery speech of an RSS damagogue. From this point, about 5.30 p.m. the procession started, headed by a jeep with black flags and the RSS chief at the mike inside the vehicle. It crawled its way to the gate. When the jeep tried to force its way into the compound the two groups clashed.³⁶

The district officials were indifferent to the situation by observing mona lisa silence till then. No preventive or precautionary measures were taken. The role of the police was quite intriguing. At 7 p.m. a bus carrying 50 people from nearby villages coming to hear Sheikh Abdullah was diverted by the police to proceed through the majority community locality of Thana Sadr. Near the UP Roadways

35. For details see, Aswini K. Ray and others, Meerut Riots (Jagdambar Printers, New Delhi), p. 7.

36. Ibid.

Depot, in full view of the Police Station, the bus was stopped by a crowd of 100 or 150 and the passengers were beaten up and stabbed. Along with three other persons, an important minority leader, Master Rehmat, died on the spot. Their bodies were picked up by the police; Rehmat's body was later identified by his son, though in police records he was reportedly mentioned as belonging to another community. The Sharma (Memorial) Hospital records show that of the nine persons injured on January 28, 8 were from the minority community. In the cantonment Hospital through the periods the riot continued on 28th, 29th and 30th January, in all 27 were admitted, of whom 22 were from the minority community. There were five cases of stabbing, all victims belonging to the minority community.³⁷ As had happened in Ranchi, in Meerut also all telephonic communications of the local minority leaders were tampered with. Despite repeated requests to the District Commissioner and the Superintendent of Telephones, matters did not improve.

As has been observed in the beginning, the Meerut menace was pre-planned by the local leaders belonging to the Hindu Mahasabha. The apathy on the part of the police gave the rioters the requisite sanction to carry on with their nefarious designs. The partisan role of the police ought to have been investigated by the Home Ministry. But the Home Ministry watched the situation quietly without conducting any enquiry and penalising the officials found to have sided with the rioters. Curiously enough, the Home Minister did not think fit even to go to Meerut to warn the officials and console the victims. This is how the Home Ministry reacted to the

37. Ibid., pp. 10-11.

Meerut riots. It becomes quite evident that either the intelligence system is so inefficient that relevant and correct information is not available to the Home Ministry or the machinery of the Home Ministry is so clumsy and sluggish that it is always outstepped by the rioters. Some are, however, justifiably inclined to suggest that the administrative machinery is infested, at all levels, with RSS oriented personnel and hence the indifference is studied and deliberate.

Indore Riots

In the communal carnages discussed above the members belonging to the minority community were the main sufferers. The Indore riot is in no way different in this regard. The communal tragedy in Indore started over the victory procession of Chandgiram. Clashes over processions is not new to India. History repeats itself. The same thing happened in Indore. The usual stoning by the 'miscreants' disrupting the procession and infuriating them. The procession was proceeding smoothly and one of the processionists was carrying an iron-rod to make the way for the procession. Accidentally a Muslim boy was hit by it; there was some talk and very soon the matter ended. But in the night an orgy of arson and pillage engulfed the various localities. It started from the Jhuggi Jabran Colony, and as usual proceeded ahead without much resistance from the police force. There was complete panic in the city. Again as usual curfew was imposed on the entire city which remained in force for 70 hours continuously. Did the imposition of curfew alter the situation? Certainly not. On the contrary crimes were freely committed during curfew hours. The number of arson cases during the curfew hours was reported to be

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85. It is not that the relations between Hindus and Muslims were not healthy; on the other, quite a good number of Muslims were the admirers of Chandgiram. His wrestling bouts in Indore used to be arranged by one Syed sahib. A Muslim hotelier was one of those admirers of Chandgiram who had prepared wreaths of garlanding him when the procession reached the shop³⁹. In the absence of clear planning such a tragedy is difficult rather impossible to take place.

Even in Indore the role of police was seriously doubted. There was a tremendous change between its role before and after January 6, 1966. It was only after the deployment of force from outside the state under the instructions of the Inspector-General, M.M. Shukla and the Minister for Steel (Minister of State), Mines and Metals, P.C. Sethi of the Union Cabinet that the situation could achieve normalcy. The partisan outlook of police was not peculiar in the Indore episode alone; there are similar allegations of police partisan behaviour after every communal violence. The Ministry of Home Affairs did not think it proper to pay attention to this serious problem. Nor was this issue ever raised at the meetings of the National Integration Council or the Chief Ministers' Conferences. A mere ceremonial approach with cosy platitudes to this stubborn problem by the Ministry is no remedy. Exemplary punishment of the officials guilty of dereliction of duty is bound to create a healthy atmosphere. Why this punishment is not given in spite of proved inefficiency, deliberate indifference and even in some case positive connivance and complicity of the District officials justifies the

38. Radiance, Vol. VI, No. 48, June 15, 1969.

39. Ibid.

belief that the guardians of law and order are themselves the perpetrators of lawlessness, jeopardising the objective of secularism, national integration and social justice and projecting a tarnished image of India before the outside world. Perhaps they do not realise what permanent harm they are willfully causing to the political and social fabric of India.

Karimganj Riots

The basic cause for the Karimganj holocaust was the cow.

"On March 1, (1968) afternoon, one cow belonging to a Muslim family of Hadergram in ward No. 22 of Karimganj strayed into the House of a Hindu family of the same locality. It caused some damage. A young boy of that family Nityalal Sarkar, a student of class VIII, of Public High School took that cow for impounding it.... While on the verge of impounding the cow, Nityalal was obstructed to by some five to six young boys of the other community.... These boys assaulted Nityalal inflicting some injuries. Abdul Bari, a Congress leader of the locality intervened and pacified the boys, with the assurance that the elders will meet the next day and settle the matter. Accordingly some elders belonging to both the communities met. They decided that the assailant should apologise to the injured and pay a fine of Rs. 200....⁴⁰"

This decision did not satisfy the evil mongers. While the arbitration was closing up, a batch of 20 to 25 men led by one Gandhi interrupted the proceedings and shouted for vengeance on Muslims. Very soon shoutings and stone-throwing entered the scene.

40. "Karimganj Riots", Secular Democracy, April 1968, p. 29.

The place being very near to a local school stones must have fell inside the compound. As a corollary, a rumour got momentum that one lady teacher was seriously injured, which she was not. All this provided a fertile ground for the miscreants to indulge in pillage and rampage. Properties were looted, houses burnt and there was complete pandamonium in the whole town. The minorities were the worst sufferers. "From the next day, March 3, the riots spread into the rural areas around Karimganj and continued upto March 7, the day, the Union Home Minister visited Karimganj.... Muslim retaliation has been severe, particularly in areas like Grishganj bazar, Sarar Park and Raghurtink bazar."⁴¹

Violence had been spreading from town areas to the interiors, in the villages, and the local officials could hardly prevent it. "The Border Security Force stationed in the areas could not be utilised by the local SDO who was told that the local commander being out of station the forces could not be brought into the town's rescue. It is amazing that no one realised the extent of threat to the security of the country, in case of a breakdown of law and order in a border town."⁴² What was still more surprising was that "armed Police, City Magistrate, SDO and SDOP were all present when the whole of Hadargram was in flames; houses were burning, shops were being looted, people were being killed; still it is amazing that no order to open fire was given during the entire period of the riots. Fire arms are provided to deal precisely with such occurrences and yet, nothing, except teargas was used, and that too, after the damage

41. Ashwini K. Ray and others, Karimganj Riots: A Political Study (New India Press, New Delhi), p. 28.

42. Ibid., p. 31.

had been done and the situation gone out of control. A part of the police force was deployed, rightly, to prevent the Muslims of Anisail anxious to see their relatives in Hadargram; another part, belatedly, to remove the obstructions against the fire-fighters, and only a small part of the police force left to deal with the Hadargram situation. To make the most effective use of the small force would have been to order fire which was not done. This lapse left the rioters free to continue to arson and loot⁴³. The blunders on the part of the local officials went unnoticed by the Home Ministry. Investigation to find out the motive behind the indifference of the officials was never undertaken. The rehabilitation measures were far from encouraging and it hardly had any effect on victims. This is an example of the most haphazard way in which communal violence is treated by the elaborate machinery provided for the maintenance of law and order which spends a lot of taxpayers money and is maintained for the avowed purpose of peace and tranquillity.

Gorakhpur Riots

As in Karimganj, the issue involved here was also a cow, with slight difference. A rumour gathered momentum that a cow sold to a person of the village Pokharbhitwa, was not traceable; and it was supposed that the cow was slaughtered. The entire gang of the mischief-mongers started a smear campaign against the minorities and made the climate fully congenial for a communal flare-up. The aim was to loot a few houses of the well-to-do persons belonging to the minority community. In the process many other crimes were committed

43. Ibid., p. 32.

to give it the colour of a Hindu-Muslim riot. Thanks to the local press, a wild rumour of Hindu-Muslim riot came in the swim. "In no time the news enveloped the whole district and also the adjoining district of Gorakhpur. Many Muslim-populated localities in the vicinity were struck by panic as a result of vile propaganda. The day after, while the local press looked askance for an authentic version of the incident by the District authorities, a news item was flashed in the newspapers, with Gorakhpur dateline, that a communal riot had taken place. The unscrupulous correspondent reported the matter, very briefly and wanted people to believe that the village in question was in Gorakhpur District. But all this did not work at that time, thanks to an alert press in the district and a conscientious District administration. The Superintendent of Police did an excellent job in rushing to the spot at the earliest, took stock of the situation and deployed his men at the heels of fighting gangsters".⁴⁴

The above incident reveals the significance of rumours and rumour-mongering and spreading agencies in bringing about a major clash. The press could play an effective role in checking up the rumours and publishing the true facts connected with the issue. In the above incident had the SP been indifferent as was found to be the case at other places, full-fledged communal riot would have been the result. The magnitude of communal violence and for that matter any type of violence depend upon the local administration in the first instance; their vigilance acts as a deterrent to the evil designers and architects of bloody violence.

44. "Cow and the Crime War", Mainstream, Vol. V, No. 33, April 15, 1967, p. 22.

A note

Problems of space and lack of information have retarded scrutiny of the communal carnages that took place in other parts of the country. If one makes a dispassionate study of the factors leading to such disasters, one will find the same age-old grievances - cow-slaughtering, stoning of processions; abduction of women; raids on sacred places; disrespect to Holy Books; etc. Investigations by high powered commissions have, however, revealed that these incendiary agents were not the genuine causes but flimsy pretexts to let loose an orgy of violence planned and designed against the helpless minority with a view to terrorising, demoralising and economically paralysing the minority community as a whole. Irrespective of factors, once a riot breaks out it becomes an administrative problem and the failure to tackle it is the failure on the part of the administration. Even slight lapses will lead to destruction of life, liberty and property, which no sane person can justify. There is some truth in the reports of police partiality during periods of agony and crisis caused by riots. It is no exaggeration that a simmering communalism reposes deep in the police mind. Reports of police siding with the rioters are not uncommon. "During the terror in Rourkela in 1964, the town was in the hands of murderers and the police looked on. A senior Forest Officer was shooting Muslims hiding in the nearby jungle".⁴⁵ The behaviour of police during communal riots had been a nexus of criticism and loose talk. Police co-operation with the rioters is highly obnoxious as the calamities that result from such

45. Habibullah, "Communal Virus, Historically speaking", Mainstream, Vol. VI, No. 51, August 15, 1968, p. 17.

an alliance are too obvious. To cite one instance of the police indifference (Delhi, March 14, 1966), "the trouble began in the morning when the Jan Sangh workers attempted to force a Chandani Chowk trader to close his shop (in response to Sangh's hartal call), which he declined to do. Some people passing in by a jeep stopped to intervene. This is believed to have infuriated the Sangh workers who turned the jeep and set it to fire.... In the meantime there were policemen not one not two but over a dozen, who were standing by throughout this incident which lasted for about an hour and they were watching without intervening. Then on the spot report of the Statesman tell us, the Gurdwara was the focal point of the day's agitation launched by the Jan Sangh to protest against the Congress Working Committee's recommendation to form a Punjabi Suba.... The whole thing took place right on the doorstep of the Kotwali police station where not more than 50 policemen could be mustered. Reinforcement such as they were arrived after some four hours later, only after the Deputy Home Minister, V.C. Shukla and the Delhi MP, Mr. I.K. Gujral had contacted the Inspector-General of Police on telephone from the Kotwali itself. Till then the police had merely restricted themselves to occasional teargassing of the mob but for some unstated reason did not take to the business of clearing it. It was Mr. Shukla and Mr. Gujral who arriving a little after 2 p.m. personally conducted the operation for the next hour, or so, when the Chief Commissioner, Mr. A.N. Jha and the Inspector-General of Police, Mr. B.B. Banerjee arrived. But even as the police finally managed to clear the crowds from the neighbourhood of the Gurdwara, a number of hooligans unleashed orgy of looting and arson, some half a dozen shops, including one of a watch-maker, were looted and

three partially burnt down, with the police still doing little to quell the rioters.⁴⁶"

One remedy to check the police laxity during breakdown of law and order especially during communal riots is to suspend the district administration during such outbreaks and to entrust the Army with the task. Towards this end, if necessary, amendments in the Constitution be made. Arson and looting during curfew hours is no secret and call for serious thinking on the part of the Home Ministry. One reason may be due to the over-generosity of the officials in issuing passes to a large number of people without verifying their bonafides. A definite criterion is yet to be evolved and see to it that it is being vigorously implemented. Secondly, mounted policemen can be an asset in such contingencies as they can disperse a crowd more easily than foot constables. Thirdly, a zone-wise division of policemen, *to assist the neighbouring states in hours of distress* be undertaken. Such an arrangement will also help in finding out inter-state bad characters. Fourthly, care be taken to see that firing is not resorted to unless there is grave danger to the disruption of law and order. Finally, whenever, there is a demand by more than ten members of Parliament, about the partisan behaviour of police during communal riots, a judicial inquiry ought to be conducted without much hiatus by the Ministry of Home Affairs. The purpose of inquiry shall not be however, the wholesome condemnation of one party or the other but to shed light on the real culprits and bring to surface the delinquent officials for proper scrutiny by the Ministry of Home Affairs.

46. Kapur Singh, Lok Sabha Debates, Vol. LI, No. 20, March 15, 1966.

By and large, the representation of Muslims in essential services not excluding Army, Police, Border Security Force, is negligible. A realistic policy is to be adopted in this regard. The demand for just representation of the minorities had been hanging fire since long and the Home Ministry looks at the problem afresh after every major communal riot. The riots had unmistakably revealed that the worst victims have been Muslims. The frequent killings have instilled in the minorities a sense of seclusion from political life of the nation and want of confidence in the bonafides of law and order machinery. The engineering of a riot in 1964 as an offshoot of the happenings in East Pakistan is like saying "I commit the mistake you pay the penalty". In the interests of minorities, on both sides of the border, friendly relations between India and Pakistan are of prime necessity. Fair treatment of minorities, in accordance with the pledges given on the eve of independence that it is their political and moral responsibility to accord equal treatment to all citizens be observed and implemented. Continuous violation of fundamental rights, in the form of arson, loot and murder, besides violating the constitutional provisions and democratic spirit will demoralise and dehumanise the entire community. That would take the community far away from modernisation and the national mainstream, if any. Arson and loot are in no way a devise for modernising or civilising a community. It would, on the contrary, lead to parasitism and pauperism in the country, which would be a liability for the Government. There can be neither prosperity nor advancement if a large section of population remains economically unsound, politically frustrated, educationally handicapped and physically insecure. The Ministry of Home Affairs, being the guardian of minority interests

and the chief agency responsible for the maintenance of law and order should adopt a pragmatic approach, taking into consideration all practical aspects connected with the problem. It would be in the fitness of things if a separate department of Minorities is constituted in the Union Cabinet to examine the grievances and plan for the betterment of the minorities. The Ministry of Home Affairs at present is responsible for the welfare of the minorities, but its preoccupations with other functions have left to it neither the time nor the will to cope with this problem.

Rumours during communal tensions reign supreme. Rumours like an alleged rape or molestation of women belonging to a particular community have played havoc with the peace of the nation. For instance, the Aligarh riots (1961) was the outcome of the rumour of the murder of a Hindu student. The news spread like wild fire and people in city were made to believe that the body of a Hindu student was untraceable. On investigation it was found to be a white lie. But in the meantime, anarchy, arson, loot and murders overtook the entire city. In the same vein "an illicit pamphlet in Ahmedabad suggested that Muslims were oversexed and therefore raped Hindu women"⁴⁷. Rumours are common not only in emergencies but also in normal times. For instance, "the Union Deputy Minister, Yunus Saleem, was to visit Meerut to preside over some meeting of the Muslims. He could not go. Pandit Sunderlal presided over it. But, the local Jan Sangh wanted strong steps to be taken against Yunus Saleem, 'because he has, as usual, made a very violent speech at the function'.

47. "Role of the Press during Communal Troubles",
The Hindustan Times, May 24, 1970.

When the authorities said that they had no information, the self-constituted guardians of law and order said, 'Your police is partial'.⁴⁸ Such misleading reports can only rouse tensions, promote hate campaign, divert attention from the real problem and put wrong ideas into the heads of unbalanced people and the crackpots. The general public by themselves might not indulge in violence but they are easily excited and there are always sufficient number of hotheads ready to make trouble. These elements are to be frustrated, for which the responsibility lies with the law and order machinery i.e. the Ministry of Home Affairs at an all-India level. In the absence of correct information rumours are readily believed if responsible newspapers do not publish all facts available to them. This 'play-it-down approach' with the assistance of rumour-mongers inhibits greater reaction against such happenings. For countering effectively such rumours before they take their own turn, continuous information ought to be supplied by the Press, Radio etc. Towards that effect, requisite facilities be accorded to the local news agencies to visit the affected areas. The local authorities and the state Home Department, shall make it a point to furnish all facts concerning the riot and pass it on for publication.

A radical review of the press policy in India in reporting communal riots is to be undertaken. Exaggeration and sensationalism are to be made penal offences. Proper investigation and timely verification of rumours is desirable. In this context the All India Radio has lost its credibility. The principles evolved at a Nine-Nation Seminar on Reporting Ethnic and Communal Tensions conducted

48. S.P. Sinha, The Task of National Integration (S.V. Committee, New Delhi), p. 14.

by the Press Foundation of Asia in April 1970, if followed strictly can be of great help in creating an atmosphere congenial to peace and tranquillity. Some of the recommendations include; "Factual accuracy in a single story is no substitute for the total truth. A single story which is factually accurate can nevertheless be misleading; prejudice may sell newspapers but newspapers should resist the temptation to exploit human fears for commercial gain; all stories of communal, racial or religious nature should be scrupulously ascribed to their source. The authority of the source should be properly evaluated; it is recognised that all editorial comments, however, benign do not necessarily compensate for the harm done by a misleading news report; Journalists should always use cool and moderate language especially in headlines and also in display. No conversion should be made to rhetoric, lurid and gory details and emotive reference to past history should be avoided; Unverified rumour is not the proper content of news columns. In particular there is great danger in speculation about violence; when there is violence particular care should be taken about publication of first incidents; When violence has broken out, the role of government in the supply of information is crucial. There must be a continuous supply of information from their source to prevent rumour, speculation and needless panic", etc.⁴⁹

Articulate public opinion will go a long way in lessening communal tensions. A healthy press is the sine qua non of law and order, democracy and Rule of law. The tragedy with the inarticulate public opinion is that a big clash, be its motive a purely economic

49. The Hindustan Times Weekly (New Delhi), May 24, 1970.

one or social or political is classified as communal riot; if members belonging to both major communities are among the casualties. The political parties too have an equally great role towards maintaining peace and order. But unfortunately the political parties with hardly any exception, instead of finding out the melody for the communal virus have made it an issue to further their political bickerings, the biggest beneficiary in this game being the Indian National Congress. If the more moderate and democratic parties have been unable to rise above their petty differences, so far, the dastardly communal riots should make them see the light. Every political party undoubtedly made secularism its creed, but no party refrained from exploiting caste and communal prejudices whenever an occasion arose to that effect. There is hue and cry among the so called religious leadership over-cow-slaughter or proposals to amend personal laws, but no religious leader has ever raised his eyebrow when there is organised human killings by human beings themselves. Such leadership by playing second fiddle to political leadership has further aggravated the problem. Besides the governmental efforts which are proverbially lethargic, political parties owe a responsibility for the smooth working of law and order machinery.

Undoubtedly the Ministry is alive to the dangers of communal violence. Chavan observed in Parliament,

It is a matter of deep concern to us that in Bhagalpur, Meerut, Chicknagalur and Karimganj, communal violence has claimed a number of innocent lives and also led to loss of property. While the immediate causes which led to the trouble in each case may vary from place to place, main sufferers have been the members of the minority community.... The House is aware that I had written to all Chief Ministers soon after the Ranchi Riots and had impressed upon them the need for utmost vigilance and firmness in dealing with communal trouble because the

very foundations of our national honour and integrity are involved in this matter. The House is also aware that a Commission of Inquiry was appointed to go into some of the major disturbances that took place in 1967. Action has been initiated to revive the National Integration Council in which the fundamental problems of national integration can be considered dispassionately and long-term solutions found for meeting evils like communalism and regionalism. A great responsibility lies on the Administration as well as on all political parties to ensure that communal harmony is not allowed to be disturbed. I have emphasised this in all meetings of the Zonal Councils which have been held since August 1967. 50

Despite the best intentions of the Home Minister, communal riots have become a recurring phenomenon in the Indian politics. Such outbreaks are dangerous portents for a country ostensibly wedded to progress by democratic methods within a secular framework. After every major communal riot the NIC was convened, resolutions drafted and communicated to all State governments. One reason for its failure to tackle the problem may be due to non-implementation of policies by States, laid down by the Centre, which again reflects the complacency on the part of the Ministry. The communal problem, being a national problem, shall be treated on all-India level and not as an isolated issue or mere breach of law and order. The dangers endemic in such incidents of violence shall not be underestimated, it is such a devastating pestilence that it pollutes whatever it touches. Unfortunately the problem has been tackled by mere fits and starts. What happens when a riot breaks out is that the Minister or the Deputy Ministers make a rush to the affected areas, issue statements prepared by the secretaries. After the statements the bureaucrats prepare a report and the matter ends. In a sense the indifference on the part of the Home Ministry has made the confusion worse confounded. For instance, "when weapons were

being manufactured in the factories of Jamshedpur and Rourkela to kill Muslims what was the CID doing? How did the government ignore the possibility of a similar manufacture of arms for Naxalbari also? Why was no action taken against those responsible people in whose presence and direction of the factory production changed direction?⁵¹ Similarly why no explanation was sought from the Principal, Medical College whose collusion and encouragement had rendered the life of Medical College students unsafe? Our government claims to acquire the knowledge regarding military preparations of external enemies like Pakistan and China but it remains ignorant of posters and leaflets distributed under its nose, of the inflammatory speeches in the meetings and the preparations of the rioters to set fire to Parliament House. When each and every Muslim house has been marked even in important cities like Allahabad the government machinery remains totally ignorant of what is happening or can happen in the future.⁵² The care-free manner of tackling communal threat hardly bore any fruit. Reply^{ing} to a question in Parliament about the setting up of a judicial committee to probe into the communal disturbances, the Home Minister Y.B. Chavan had observed, "even in the case of Karimganj they have themselves started an enquiry. It is not necessary for us to start an inquiry".⁵³ This is one instance of the clear dereliction of duty on the part of the Ministry. To dismiss the question of probing investigation as the responsibility of the

51. Begum Anis Kidwai, Communal Strife and the Present Situation (S.V. Committee Publications, New Delhi), p. 10.

52. Ibid., p. 11.

53. Lok Sabha Debates, Vol. XVII, No. 56, May 3, 1968.

state is a misnomer for the Ministry. Articles 355, 356 and 365 enjoin upon the Centre to protect every state against external aggression or internal disturbance. No use blaming the state government or district administration which is nothing but a sinister beating about the bush and side-tracking the responsibility.

It is needless to say that the maintenance of public order is the responsibility of State governments. The subject of public order is included in the State List. It is not even in the Concurrent List. But Article 355 of the Constitution provides that it shall be the duty of the Union Government to protect every state against external aggression or internal disturbance. The anomaly as a result of this arrangement is more than obvious. What exactly Article 355 connotes is to be clearly defined. A careful examination of Article 355 reveals that the Central Government can intervene on the slightest pretext or it can refuse to interfere even on the gravest situation. This is precisely what happened. In case of Kerala and West Bengal, the Central Government intervened on the most flimsiest grounds and foisted presidential Rule, with a view to maintain law and order. On the contrary, the Centre did not budge an inch in areas affected by large-scale violence. The Ranchi killings, the Meerut tragedy, the Ahmedabad outrage, the Bhilwandi massacres and the Telangana turmoil failed to catch the eye of the Central Government. What happened in Ahmedabad and other places is most inexplicable. In case of Ahmedabad for instance "the figures for murders is not less than 2000 and that for the wounded thrice the number. There is hardly a shop of a Muslim in a Hindu and mixed areas which has not been burnt and destroyed. The figure for those who have taken refuge in various camps is more than 40,000, men, women and children, of

whom four-fifths were Muslims. The damage to organised industries is computed at 33.25 crores of rupees by the Gujrat Chamber of Commerce. Rs. 5 crore worth of wages have been lost by Textile Mill workers.... Loss of private property in the form of household articles of families who have lost everything and many of whom have lost their bread winners, could be easily more than Rs. 5 crores.⁵⁴ Such beastly crimes cannot be explained away by the 'siren-song of secularism' or 'glorified gimmicks' like the National Integration Council. For small and insignificant incidents the local authorities shall be held responsible but when a situation develops beyond the reach of local authorities, the Centre has an obligation to restore back normalcy. The excuse that law and order is a state subject is the most unconvincing alibi for passing the buck. Absence of clear provision on this vital issue has resulted, time and again, in conflicts of jurisdiction and duplication of work and efforts. A constitutional amendment, therefore, is necessary. Either the Home Ministry must come forward openly that public order is a state subject and the States have to cope with it, failing which Presidential Rule be declared or the subject of law and order be made a Central subject. The Home Ministry should invariably be held responsible to the Parliament regarding law and order position in the country. The present arrangement reminds us of the old system of Dyarchy, where no one is responsible to anyone except to themselves. Since communal riots is an all-India phenomenon, they should be dealt with at the Central level. Mere explanations with regard to jurisdictional competence should not be considered enough.

54. B.N. Pande, Butchery in Ahmedabad (S.V. Committee, New Delhi), p. 20.

A realistic approach, therefore, is the need of the hour. The preventive sections of Criminal Procedure Code under Sections 106 to 110 are to be vigorously applied. Section 144 can also act as an effective tool provided it is implemented without reservations. A pedantic approach with sheer political stunt and empty promises is no substitute for communal flare-ups. There was a furore after the Ahmedabad Riots that the tragedy was engineered by a foreign hand. This might be true. But what was the CID doing when all these activities were going on? Is it not the responsibility of the Ministry of Home Affairs to iron out such subversive activities from the state? This sort of inspired propaganda based on manufactured evidence about infiltrators, Pakistani designs had been pouring out ever since the outbreak of the Ahmedabad carnage. They are too obvious and the totally unsubstantiated nature of evidence too transparent to deceive any keen and impartial observer. Our policy towards maintaining internal peace was based on wishful thinking, reliance on mild doses of secularism, indifference to the mounting threats from the ugly communal forces and ill-equipped intelligence net-work. No serious consideration, whatsoever, was given to the strengthening of law and order machinery at the district level. The Home Ministry relegated the problem to a petty issue and ignored its serious consequences. The frequent but untimely army intervention to assist the local forces failed to put a stop to the communal killings. The NIC debates proved absolutely inadequate and insufficient in finding out a solution to the communal deadlock. The half-hearted approach, inevitably, is due to its apathy and disinterestedness towards the reality of the situation and the lofty proclamations of secularism could no longer hide the ugliness of communal conundrum.

Secularism should be treated as a live issue and not as a toy to be paraded at frequent intervals caused by communal riots. It is in fact an irony that all talk of secularism gathers momentum in the wake of a major communal riot. Every official of the Government from the Home Minister down to the district officials claim that the situation is fast improving and the forces leading to such violence are being minutely watched but all this pious thinking and superficial notions get contradicted swiftly by another outbreak. And yet the Home Ministry reacts to it as if it is a fresh breach of law and order and has no relation with such incidents of past. After every communal riot some Commission or Committee had been appointed but most of the reports and their findings are kept as secret as the CBI. The result has been an amalgam of innuendo, conjecture, and sustained efforts to conceal the truth. By the time these Commissions submit their reports, the whole thing is forgotten by the Home Ministry. There is no reason why the Commissions of Inquiry should not be able to report within the briefest possible time. A speedy inquiry helps in instilling confidence in the people and serves as guide in future for averting similar happenings.

Communal violence has brought far more calamities than aggressions by China or Pakistan. "In the Sino-Indian conflict", for instance, "India lost 3078 persons including 1615 missing officers and other ranks presumably killed. The toll in communal riots from 1950 to 1969 according to official figures based on actual bodies found, has been 3,489, the worst year being 1964 when 2,057 were killed mostly in Bihar, Orissa and Bengal. Another very bad year was 1969 with 633 killed, 480 in Gujrat alone. The figures prior to 1950

are not available".⁵⁵ In view of the magnitude of the problem special care ought to be the watchword with the Ministry of Home Affairs. After the riots, the areas affected by it should be given special consideration in matters of financial aid. Rehabilitation of victims must command the top priority of the Ministry. Under-estimation regarding rehabilitation programme is undesirable, but unfortunately this has become a constant feature with our administration because it realises that it is they who have to foot the heavy bills. In the absence of proper rehabilitation and relief measures it inevitably creates a prosecution complex amongst the victims. The district administration ought to be tightened up and be put under the best administrators available in the country. The Home Ministry must not be hesitant in being ruthless in calling out the key personnel if the situation is to be retrieved.

It is a welcome gesture that "under the Prime Minister's instructions the Union Home Ministry is reportedly working on a scheme to suppress communal violence. The scheme envisages, among other things, posting of Special Police Units in about 60 affected districts. Another suggestion was to convene immediately conferences of the officials of the concerned districts to chalk out a plan of action to ensure coordination between various agencies.... Apart from the measures to strengthen the intelligence machinery at the centre and in the states, steps to ensure coordination between the two are also envisaged. That would lead to the formation of a truly national intelligence net-work and make it possible for one state to receive information about gathering communal trouble from another

55. Upender Vajpayi, "Lessons of the Riots", The Hindustan Times, June 5, 1970.

directly or through the central agency.⁵⁶ The suggestion was rejected by many a State Governments. Their indifference to the problem reflects either the unawareness of the communal problem and the dangers endemic in them or that they do not want to solve the problem. "The stock reply by the States to the suggestion from the Centre for dealing with communal trouble has been communicated to the concerned officials. There is no follow-up action nor any means to ensure compliance with such instructions. As regards strengthening of intelligence machinery, Kerala has said this would not produce results commensurate with the expenditure and has defeated the recommendation, so has Tamilnadu. Assam has not even considered the recommendations of the NIC. Rajasthan has not cared to reply and Gujrat is still considering whether strengthening of its intelligence system is necessary. As regards modification of service regulations to provide for dismissal of teachers found guilty of communal activity, many states have said that most of the teachers are working in private schools over which they have no control. Kerala, Mysore, Rajasthan have not found it necessary even to heed to the recommendations.⁵⁷ How far this communal violence will evaporate depends on the Ministry's firmness and the receptivity of states. The Home Minister, through his good offices should make the states realise the dangers involved in such conflicts and in consultation with state governments galvanise the entire administrative and legal machinery. More administrative rapport is necessary between Centre and States. The lines of communication between them should be widened. An all-

56. The Hindustan Times, June 6, 1970.

57. Ibid.

India approach is necessary to fight this evil. No problem as a matter of fact, is insurmountable, communalism being no exception and can be contained, not in any way resorting to romantic illusions, political appeals and talking spree. Implementation alone can show how best a particular scheme works. The problem of communalism cannot be tackled by political opportunism. The failure to prevent communal disorders is not due to the inadequacy of law and order machinery nor it is due to the administration not possessing sufficient powers but because of want of strong action in time owing to political and other extraneous considerations. As Bhattacharjee had observed;

There is adequate evidence of political considerations provoking violence or inhibiting administrative counter-measures. Discussing the delay in putting down the communal riots in Ahmedabad, a senior responsible Gujrat Minister told me that political price of prompt and effective action might have been a Jan Sangh government in the State in 1972. Delayed police action had cost a heavy toll in lives and property which the Minister regretted with sincerity. He was no communalist, but was frankly describing the manner in which parties had to be played to survive. 58

Other Factors

Communalism is not the only threat to law and order, there are equally great forces towards disrupting law and order. Old habits die hard; similarly the tactics that were applied during the British regime to make them unpopular and leave the country are being vigorously put into operation against the democratic government. Lawlessness is reigning supreme and the governmental machinery to check these tendencies proved to be totally futile. Frequent breakdown of violence has resulted in heavy losses to the state exchequer.

58. Ibid.

The problem of language has caused considerable alarm and posed, time and again, problems of law and order. Language is both a source of unity as well as disruption, complete integration and total disintegration. The pendulum ever since 1953 largely swung in support of the recognition of one language or the other and according statehood on that basis. The process began with the creation of the State of Andhra Pradesh. Time and again, agitations, strikes etc. were organised in support of the regional languages by many states and within 20 years, the picture of India drastically changed when a number of states were carved out of the territory of India. Besides, the furor caused by the regional languages, the question of national language too brought about demonstrations and counter-demonstrations in different parts of the country. The Madras Government went to the extent of discontinuing NCC simply because its commands are in Hindi. The Hindi belt comprising largely the states of UP, Bihar and MP displayed disinclination towards English through various methods, strikes, wiping out of the English sign boards, destruction of public property etc. This chain of action and reaction between North and the South brought in the wake tremendous problems of law and order. Besides, breaking law and order, the lingual controversy had proved to be a serious threat to national integration. The language riots in Madras provide ample testimony to the deep-rooted prejudices against Hindi in South Indians.

To show how much detrimental the lingual question is to law and order, a few words about Madras disturbances are necessary. "On January 25, the students of Madras College, 50,000 students, had their procession in order to protest against the imposition of Hindi.

They wanted to meet the Chief Minister.... Very arrogantly, the Chief Minister refused to meet them.... On the 26th morning the Venkateswarao Hostel and the Law College Hostel were raided by the police. On the 25th midnight, goondas engineered by the Congress Secretary there, or Congress goondas entered the Venkateswara Hostel.... On the 27th ... Annamali students took out a procession. That was in sympathy with the students who were brutally assaulted by the Congress goondas with the help of the police in Madras State. On the 27th Annamamali University Students' procession was disturbed by the police. One student Rajendran, was shot dead. So many students were killed.... The Madhura Arts College Principal, an old man of 60 years inspite of his declaration that he is the Principal of the College was brutally assaulted and was admitted to hospital. There were indiscriminate firings. The Rule of Law was conspicuous by its absence. The Rule of Jungle prevailed in Madras State. The very fact that the military was alerted is itself an indication that the civil authority failed and military authority superseded".⁵⁹ A little foresight on the part of the Home Ministry might have easily averted the trouble. As Hiren Mukherjee has rightly pointed out;

If the Central Government had taken half as much trouble to help other languages as it does to help and develop Hindi, if the Central Government had tried to have Hindi as a Central language only for the purpose of inter-communication, voluntary agreement about Hindi would have been perhaps easy and possible by this time. What has happened is that Hindi alone has received all manner of help and boosting from Central Government sources and influential circles powerful in Government and near about have noised the idea of even Hindi being adopted in the near future as a medium of instruction in all States at the University stage. Such folly has created fear in

59. Monoharn, Lok Sabha Debates, Vol. XXXVIII, No. 2, February 18, 1965.

the minds of non-Hindi areas regarding the imposition of Hindi and has led many to the distorted view of preserving English for all time. This is a false and fantastic idea which must be finally and firmly renounced. 60

Serious thinking is yet to be done on the question of national language. In recognising Hindi as the national language, the problems of southern part of India ought to be taken into consideration. The very idea that Hindi is being imposed on the non-Hindi areas is bound to cause suspicion and mistrust in the non-Hindi areas. Nehru had observed in this regard;

Hindi is at present objected to by many people in the South.... Because of a feeling of imposition, and not because they are against Hindi. As a matter of fact, there are vast number of people in the South learning Hindi and learning it very well. The process is going on, but the moment you talk of any kind of imposition, quite rightly they get angry. And, therefore, all talk of imposition must go. I believe two things; there must be no imposition. Secondly, for an indefinite period, I do not know how long ... I would have English as an associate additional language which can be used for official purposes. I do not wish the people of the non-Hindi areas to feel that certain advantages are denied to them, being forced to correspond in Hindi language. They can correspond in English. I would have English as an alternate language as long as people require it, and I would leave the decision not to the Hindi knowing people but to non-Hindi knowing people. 61

The language controversy is not confined to Hindi alone. The orbit of controversy has also overshadowed Urdu. Urdu, after independence had become the chief victim of communal politics. A very wrong and utterly baseless conception that it is the sole language of Muslims had been responsible for the step-motherly

60. Lok Sabha Debates, Vol. XXXVIII, No. 2, February 18, 1965.

61. Lok Sabha Debates, Vol. XXXII, No. 5, August 7, 1959.

treatment that is being meted out to Urdu by many State Governments. The fact, however, is that Urdu had never been and is not a language of Muslims alone. It is a joint creation of Hindus and Muslims alike. The question of Urdu had been exploited by the extremist sections of both the major communities. The extremist section in the Muslim community by trying to make it more refined by introducing Persian and Arabic contents and the Hindu extremists by Hindising Urdu. The attempt to introduce Persianised Urdu at Usmania University by one group and the reduction of Urdu to news-bulletins by the other have seriously aggravated the problem. It is this distorted thinking that created and nourished the deep-rooted germs of hate in both communities. It is an irony that a riot had to be staged over the question of Urdu in Ranchi. This only proves how well-built and well-knit the forces of obscurantism and destruction are in India and how easily they can disrupt the peace of the country.

The attitude of some of the State Governments towards Urdu is not healthy especially, the State of UP. The state of UP despite the repeated reports of the Commissioner for Linguistic Minorities paid no heed to introduce Urdu as one of the medium of instruction in schools. The reason behind such apathy is more than obvious. For instance "during the Commissioner's visit to Lucknow in May 1962 the Chief Minister said that according to Chief Ministers' Conference it was not obligatory to impart instructions at the secondary stage through the mother tongues of the minorities, and the decisions of the Southern Zonal Council in this regard applies only to the Southern States".⁶² The Commissioner for Linguistic

62. S. Usman, "Urdu in Uttar Pradesh - II", Mainstream, Vol. VI, No. 7, October 14, 1967, p. 31.

Minorities in his report for 1964 insisted again; "In UP Hindi is the medium of instruction in all secondary schools except a few which have arrangements for imparting instructions through English, and the State Government have not agreed so far to provide facilities for instruction through the medium of any minority language at secondary stage".⁶³ What was worse was that the virulence of the UP Government reached to the extent that "the release of Government advertisements for Urdu papers was banned under government directions. The then Registrar of the Registration Offices had the tamerity to issue a circular ordering that Urdu documents should not be registered unless accompanied by a Hindi translation and an affidavit because 'Urdu is a foreign language'. The orders were subsequently withdrawn,⁶⁴ but only after they have done the harm".

Dr. Hriday Nath Kunzru who led a deputation of Anjuman-e-Tariqi-e-Urdu to the Prime Minister as late as April 1965 had to complain that; "efforts of the UP Government in this regard have been very unsatisfactory. Not only is the extent of the effort of the UP Government in this field of Primary education highly unsatisfactory but its implementation of the directive given in the communique of the Home Ministry in July 1958 has been half-hearted and unsatisfactory".⁶⁵

It is only in UP that even the schools run by linguistic minorities cannot introduce their mother tongue as medium of instruction. Such a policy towards the linguistic minorities by State governments have widened the gulf between various groups,

63. Ibid.

64. S. Usman, "Urdu in Uttar Pradesh - I", Mainstream, Vol. VI, No. 6, October 7, 1967, p. 31.

65. Ibid.

speaking different languages. The Home Ministry is undoubtedly not completely dead to the problem. As a result of the reorganisation of States in 1956, bitterness over one's own language assumed new dimensions. Realising the dangers endemic in such a thinking the Home Ministry brought about a memorandum laying down the facilities to be guaranteed to the linguistic minorities by the State Governments. These legitimate rights of linguistic minorities were further emphasised by the South Zonal Council, the Commissioner for Linguistic Minorities and a number of delegations and deputations to the President and the Prime Minister on behalf of the Urdu speaking people. Despite all these efforts, the attitude of State Governments especially the UP Government remained unchanged. Unless the Home Ministry direct the states to implement vigorously the policies that have been chalked out, time and again, in regard to the language of the minorities, nothing substantial can be expected from State Governments. The constitutional provisions dealing with the protection of the minority interests (Articles 29(1), 350(a) ought to be implemented. Linguism like communalism is the fountain of trouble and threat to peace and tranquillity. Therefore a just treatment to all minorities is necessary. The rights of minorities should not only be respected but also seem to be respected, lest the evil forces of separatism will gain momentum.

The potentialities for harm and destruction of regional loyalty and provincial chauvinism are equally great. There had been a constant tug-of-war between States and Centre and between and among states over sharing of water, border disputes, location of industries etc. The clamour for statehood had resulted many a time in violence and the colossal failure of law and order. The violent agitation

launched in Andhra Pradesh for setting up of a steel plant at Vishakapatnam (1966) brought a number of avoidable calamities in the state, resulting in looting, arson, firings etc. What was worse was that even the railway tracks were dislocated which resulted in the closure of railway traffic for about a fortnight. The amount of loss to the exchequer was colossal.

The agitation in Assam for setting up of an oil refinery, the Mysore-Maharashtra border dispute, the havoc caused by the States of Punjab and Haryana over the Chandigarh issue are heavy exercises in regionalism and parochial nationalism. The Mahajan Commission appointed by the Government of India to arrive at a solution of the Maharashtra-Mysore border dispute is catching dust since the day of its submission. A realistic policy towards solving the growing tide of regionalism and effective eradication of regional imbalances is yet to be attempted. A Standing Committee on States to make a study and to suggest measures of preventing regionalism, taking even deeper roots than what it is at present, perhaps, is one remedy. In the absence of clear policy on the part of the Ministry of Home Affairs to solve this ticklish problem, fragmentation and bifurcation of India into many mini-Indias shall not be glossed over. The various Senas, Shiva Sena in Bombay, the Lachit Sena in Assam are but the manifestations of regional loyalties. Besides these two well-known Senas there are about 60 groups⁶⁶ of that nature, the motive being the same. The Senas are the outcome of regional imbalances, mass-unemployment and cultural factors. Unless the sources of disruption are attended to properly no amount of white-washing and wishful

66. For details see, Y.B. Chavan, "National Integration", Mainstream, Annual Number, Nos 1, 2, 3, 1968, p. 16.

thinking can prevent the seditious tendencies from spreading throughout the country. "What is the Shiva Sena? A declaration of war against South Indians? A programme for social and economic transformation for the Maharashtrians? A startling new ideology to replace old ones tried and found wanting? A new political party, a bargaining posture, a strategy of blackmail or just a fear in the mass mind, deceptively alluring but basically misleading? The Sena, it is easy to surmise, is in a state of flux. Ostensibly, like Parabrahma, it was self-created. The date of birth was June 19, 1966, which makes it a juvenile among political parties (if it can be classed as such); in fact an infant. More plausibly, someone, some unknown, unmarried genius invented the Sena and its chief Bal Thackeray ... what has attracted Maharashtrian youth to the Shiva Sena primarily is a campaign for the greater employment of the Maharashtrians. Every critic of the Sena including Shri Y.B. Chavan has expressed sympathy with this particular aspect of the Sena. Leftist leaders including S.A. Dange, have equally professed sympathy with this objective. They have only deplored the Sena's method of agitation. A few sensitive but not so prominent people have regretted that this agitation is buttressed by a hate campaign directed against a section of the population⁶⁷".

The dangers endemic in the activities and the philosophy of Shiva Sena are undoubtedly known to the Home Minister. He rightly observed: "some of these Senas and their philosophy not only deserves severe condemnation but, there is urgent need for effective action to curb their activities"⁶⁸. Effective steps to reduce the Sena

67. G.N. Acharya, "The Growing Tiger", Mainstream, Vol. VI, No. 32, April 6, 1968, pp. 8-9.

68. Y.B. Chavan, "National Integration", Mainstream, Sixth Annual Number, Vol. VII, Nos 1, 2, 3, 1968, p. 16.

menace ought to be taken by the Ministry. The glaring example of discrimination being meted out to the South Indians in Bombay by the Shiva Senaites is a clear constitutional violation. The Constitution provides under Article 16(2): "No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for, or discriminated against in respect of any employment ... under the State". Necessary steps are, therefore, called for carrying the country towards meaningful, purposeful and progress-oriented lines. It demands of the Home Ministry self-criticism, objective assessment of facts and a strong will to combat these evil forces spreading hatred in the country.

Gheraos and Bundhs

Gheraos and Bundhs are the newly discovered techniques of spreading violence. A Bundh implies unscheduled closure and voluntary unemployment of labour force for a certain period. Stoppage of work is a matter of considerable alarm in developing polities like India as it directly affects the economy of the State. In case of Bombay Bundh, to cite one instance, the 600,000 workers under the Factories Act earn Rs. 25 lakhs a day and vital industries such as the textile, food-stuffs, general electrical goods, engineering, rubber, petroleum and chemicals have a turnover of 3 crores a day. A total strike by BEST workers would impose on the public exchequer irreparable financial loss detrimental to nation's economy.⁶⁹ Bundhs not only bring economic chaos but have a tendency to bring administration to a standstill. There is deployment of police force to maintain law

69. K. Meenakishundaram, "Costs of a Bundh", Politics of Mass Violence, in S.P. Aiyar, ed. (Manktalas, Bombay, 1967), p. 125.

and order at the time of the Bundh. The police force are trained and employed for tracing out criminals and for maintaining law and order in society. A Bundh necessitates diversion of the police forces from the regular duties to bundh assignment which imposes a great strain on them, apart from avoidable public expenditure.⁷⁰ During the Bombay Bundh the Bombay High Court had to be closed for the first time in the history of the court. When a High Court functionary asked for police assistance on the telephone the reply of a top-ranking police officer was: "Are the Heavens going to fall if the High Court remained closed for a day".⁷¹ Thus the entire law and order machinery was in the state of fatalistic inertia and nerve-racking moments of despair.

Bundhs reflect lack of faith and trust in the established process of Rule of Law; a deep-seated suspicion in the sincerity of the government and throw open the problems of law and order. ~~Frequent resort to this technique speak of lapses on the part of the~~ administrative apparatus in solving problems. Besides administrative lapses a bundh can also be the outcome of political and economic mal-adjustments. But once a bundh is successfully lodged, it becomes an administrative problem. Delayed action and administrative procrastination will further complicate matters.

The practice of Gheraos have also gained considerable momentum. They are as dangerous and as prejudicial to public order as Bundhs are. Gheraos mean surrounding of a person or persons till he/they agree to the demands of the agitators. For instance, in West Bengal, "in hundreds of factories which flatly refused to pay legitimate

70. Ibid.

71. Ibid.

bonus to the employees, one day's gherao helped the management to find the money which till then was not available.... It may also be mentioned that out of 2,400 cases of defalcation of employees provident fund in the whole country over two thousands have occurred in West Bengal alone".⁷² Bundhs and Gheraos are not purely law and order problems. A feeling is rampant among citizens that it is only the language of force that can move the governmental machinery. It is that thinking that have brought in the limelight the various techniques of disrupting law and order. The only effective remedy for this would be to attend to people's grievances sincerely with a view to solve them. The frequent disputes between the employer and the employee have also added to the magnitude of the problem. A close and constant liaison between the Ministry of Home Affairs and the Ministry of Labour would go a long way in tackling some of the methods, causing havoc to the law and order situation.

The Naga Problem and the Mizo Problem

Unrest in Mizoland had become constant source of nuisance to public order. The Mizo National Front, the herald of separatist tendencies had been sowing the seeds of disruption in the country under the banner of autonomy. The then Home Minister, Gulzarilal Nanda asserted in the Parliament that no such thing could be tolerated by the Government.⁷³ But hardly any steps were taken to normalise the situation. The constant threat from the Mizos led a lot of civilians to flee from the hill areas of Assam which paved

72. Ibid.

73. Lok Sabha Debates, August 12, 1966.

the way for the so called National Front to carry on its nefarious activities. Assam constitutes the border state of India. Effective care of the border areas is the responsibility of the Ministry of Home Affairs. G.L. Nanda, instead of solving the problem with an iron hand, dismissed the entire issue as a matter falling within state jurisdiction. Whatever might be the constitutional position the State of Assam constitutes a border state inhabited by tribal people. Protection of border states as well as the well being of the tribal people constitute the responsibility of the Home Ministry. The crux of the problem is that the significance of the Naga problem has not been fully realised by the Ministry, which resulted in the continuing turmoil in the hill areas of Assam. This total apathy of the Ministry led Lal Denga, President of the Mizo National Front, to rise in armed revolt against the Indian government and had the ~~courage to declare Mizoland as sovereign and independent of India.~~ This came as a shock to the Assam Chief Minister, Chaliha in the first instance, and then the Home Minister. The Mizo rebels further worsened the situation by escaping from prison on March 6, 1967 and Laldenga after his treacherous escape crossed over to Pakistan, to the bewilderment of the State and the Central Administration. The situation became so tense that elections had to be postponed and the normal functioning of administration was in a fix. Laldenga fled to UK from Pakistan and obtained respectful sanctuary there. Government's record in the maintenance of law and order especially in such vulnerable parts of the country as Mizoland and Nagaland is far from encouraging.

Similarly the Naga problem has been haunting the nation, threatening the delicate fabric of Indian nationhood. The Home

Ministry curiously enough, has left the Naga problem to the Ministry of External Affairs. Such inter-state intricacies and issues involving the breakdown of law and order and constituting a permanent danger to the security and territorial integrity of the State or any part thereof, ought not to be dealt with by the Ministry of External Affairs. The secessionists designs of the Nagas, their demand for the separation of Nagaland from India have taken firm roots, which have displayed considerable violent activities. The policy of the Government had "encouraged the rebel Naga representative to grow stronger in the belief that they are entitled to be treated as envoys from other sovereign country instead of as Indian citizens who are bent upon subverting the established democratic order and have not hesitated in pursuit of their anti-national aims to collude with a neighbouring country and to secure arms and training there.... Nobody can quarrel with the government if it includes talks among its methods of dealing with unruly elements disturbing law and order in the sensitive border State. But there appears to be no justification for the red-carpet treatment consistently accorded to the processions and under-ground delegations which have been coming to New Delhi. Accustomed to such royal treatment, it is not surprising that the latest delegation should have felt "insulted" when the Prime Minister cannot find time to keep an appointment with them. The insolent manner in which they issued a press statement and went off without meeting the Prime Minister the next day is in fact the price the Union Government has had to pay for the kind of appeasement it has been engaged in".⁷⁴ In the absence of proper application of the Penal laws, the problem of Nagas has reached to unimaginable

74. "Price of Appeasement", (editorial), Mainstream, Vol. VI, No. 7, October 14, 1967, p. 5.

proportions. There are ample provisions in the Indian Penal Code to deal with cases of treason and unlawful way of ventilating grievances. The point which is not clear is that if the Central Government think the problem of Nagas to be purely an internal one, why this task has not been entrusted to the Home Ministry or if the Government consider the rebel Nagas as secessionists or anti-national, the frequent talks between the Naga leaders and the Government is equally misleading. Such haphazard way of doing things and half-hearted approach to the problem of such far-reaching effects is reflection of the working of the Home Ministry in particular and the Central Government in general.

In the absence of proper implementation of Penal laws, social offences mounted to high proportions, cases of smuggling, violation of Foreign Exchange rules, pick-pocketing, blackmarketing, hoarding occupied a substantial portion of the nation's mainstream. The big cities and towns create peculiar problems of law and order. For instance in Calcutta, on July 14, 1960 during the strike by the Central Government employees, not even a single private car appeared on the roads of Calcutta, owing to fear of anti-social elements. The law and order machinery in such contingencies proved to be silent spectators. The melody having become chronic, any remedies suggested should be firm, drastic and effective.

The age-old practice of untouchability is still very much in vogue, the untouchability law notwithstanding. Even the Estimates Committee of the Second Lok Sabha lamented on the evil practice of untouchability, which is rampant in every nook and corner of India. The practice further activitises the tentions and promotes actively tensions among the people, between the high caste and the low castes,

which is in no way in the interests of either national integration or peace and tranquillity in the state. The Ministry of Home Affairs is responsible for the welfare of Scheduled castes and backward tribes and, therefore, has an obligation in this regard. Mere fixation of certain number of seats in the public services is not enough, unless it reaches to the root of the problem and the real reasons for heart-burning.

Integration and the National Integration Council

The significance of national integration in a country like India, a melting pot of different races, religions, castes etc. is very vital to the security of the nation. Only proper integration can shield the hard-rock of India's multi-national character. But curiously enough the problem of national integration had been hanging fire since the very dawn of Indian civilisation. The long history of India provides innumerable instances of wars, battles, revolts and rebellions, which bear testimony to the absence of total integration in any of the periods of its history. The countless castes in Hinduism, a large number of sects and sub-sects in Islam had always been a threat to the very fabric of Indian society. Even the British with a powerful bureaucracy and steel-helmeted police failed to provide integration. Undoubtedly there was unity among the Indians during the British regime, as they joined hands with each other to get rid of the Britishers. This unity was shortlived and disappeared to a great extent the moment India got political independence. Centrifugal factors such as caste, communal, regional and political differences soon cropped up, which retarded the growth of effective integration.

The Ministry of Home Affairs, very lately got to its feet to fight back the factors clouding national integration. A National Integration Council was set up after the Jabalpur Riots in 1961 to chalk out measures to combat the growing communal menace. The first National Integration Conference was held at Delhi from September 28 to October 1, 1961. To put national integration in the words of the NIC "a psychological and educational process involving the development of a feeling of unity, solidarity and cohesion in the hearts of the people, a sense of common citizenship and a feeling of loyalty to the nation"⁷⁵. The above definition of national integration constitutes the essence of the constitutional spirit.⁷⁶ The Conference also put forward a pledge, to be chanted every year by all citizens to revive their conscience towards building up of national integration. The pledge is a genuine desire to maintain and safeguard the unity of the nation; but how far it has been followed and implemented is a debatable point.

The Conference also laid emphasis on a code of conduct in respect of political parties, the press, students and the general public, with a view to foster and develop national integration. "No party should indulge in any activity which would aggravate the existing differences or create mutual hatred or cause tension between different castes and communities, ... Every political party

75. Extracts from statement of National Integration Conference, held at New Delhi from September 28 to October 1, 1961, para 6.

76. "I, ... as a citizen of India, affirm my faith in the universal principle of civilised society, namely, that every dispute between citizens, or groups, institutions or organisations of citizens, should be settled by peaceful means; and in view of the growing danger to the integrity and unity of the country, I hereby pledge myself never to resort to physical violence in the case of any dispute, whether in my neighbourhood or in any other part of India.

in any agitation it may launch in respect of any matter should ensure that there is no incitement to violence and that no acts of violence are resorted to. If in spite of its best efforts, there is an outbreak of violence, it should be forthwith condemned. Political parties should not resort to agitation for seeking redress against any grievances relating to communal, caste, regional or linguistic issues which is likely to disturb the peace or to create bitterness or increase tension between the different sections of the public, before exhausting all methods of conciliation and mediation. Political parties should desist from creating obstructions in or breaking up meetings, processions etc. organised by other parties".⁷⁷ Since then, the political parties violated the resolutions of the Council. One of the resolutions provided unequivocally that political parties should not resort to agitations to redress their grievances relating to communal, caste, regional or linguistic issues. The agitation for the bifurcation of Punjab into Punjab and Haryana and the similar agitation launched by the so called Telangana Praja Samiti for the formation of a separate State reveal the total apathy of political parties towards the resolutions of the NIC and also imply the inability of the Ministry of Home Affairs to prevent such violations.

The NIC which was constituted after the Jabalpur Riots to evolve measures to combat the growing menace of communalism after considerable exercise in secularism and democracy, came to an abrupt end. No steps were taken by the Ministry to implement the resolutions passed by the Conference. More or less it remained practically a dead letter, till 1968 when the NIC again met at Srinagar. Curiously

77. Ibid., paras 22(i), (ii), (iii), (iv).

the Ministry of Home Affairs instead of attempting to tackle the canker of communalism on political and administrative lines dragged itself into the legal aspects of the problem. "Even the briefs prepared for the officials and the Central Ministers participating in the meeting did not contain any information about the communal situation. A number of speakers criticised the kind of material made available to them which they said did not help them to understand either the gravity of the situation or the extent of the problem. Though no one went into the reasons for the failure of the Home Ministry to make necessary preparations for an informed discussion on the problem, subsequent events, particularly the role played by the Home Ministry officials during the deliberations of the Council and its committee, gave rise to the feeling that the Home Ministry's anxiety to withhold information reflected a sense of complacency".⁷⁸

The role of the Jan Sangh before and during the Conference was interesting. As A.B. Vajpayee "found on reaching Srinagar that Subhadra Joshi was carrying on a campaign exposing the communal character of the Jan Sangh and the RSS and their role in spreading the ideology of hatred, he and the "like-minded" Prakash Vir Shastri approached Morarji Desai. It is said Morarji advised them to approach the Chief Ministers and brief them about their positions. They approached the Chief Ministers. But unlike the Home Ministry, the Prime Minister and her Secretariat had already begun doing preparatory work for the meeting. She had had a long talk with the Congress President to determine the line to be taken by them at the

78. "Srinagar Decisions", Link (New Delhi), Vol. 10, No. 47, June 30, 1968, p. 17.

meeting and had met the Chief Ministers, who had also been briefed otherwise. Vajpayee and Ghastrī got no response from them; they learnt that the Chief Ministers themselves might press for some action against the Sangh⁷⁹. Sensing the situation, Vajpayee "took up a defensive position and instead of meeting the offensive against the Jan Sangh and the RSS directly, he sought to divert the attention from the activities of the two organisations by himself asking for firm action against those who began communal riots. Some of the participants in the meeting, particularly Home Ministry officials were either taken in by the Sangh leader's posture or may have had the reasons for saying the Jan Sangh leaders themselves regarded communal violence as harmful to their cause. Others not so gullible thought, while listening to Vajpayee that the experience of administration in some states and the hope of coming to power again in some States might have had a sober effect on the Jan Sangh leadership"⁸⁰.

During the drama Bhupesh Gupta and Subhdra Joshi referred to the role of the Jan Sangh and the RSS by name and held the Home Ministry responsible for administration's failure in putting down communal disturbances. The Committee on Communalism took up Bhupesh Gupta's suggestion as the starting point of its work but Andhra Chief Minister Brahmananda Reddy and Maharashtra Chief Minister Naik came forward with concrete suggestions on the basis of their experience as administrators. However the Home Ministry officials assigned to help the Committee raised all kinds of constitutional, legal and practical objections to the restrictions proposed to be placed on

79. Ibid.

80. Ibid.

communal organisations and activities and sought to make these suggestions vague and meaningless. Very cleverly the Home Ministry officials sought to win over Reddy and Naik by raising an objection to the proposal that the Intelligence Services should have a special unit to deal with the communal problem for which specially qualified personnel should be recruited. The officials pointed out that this would amount to censure of the present intelligence agencies and lead to the creation of a new category of employees. Even Bhupesh Gupta pointed out that they already had a special branch to deal with Communists for which specially qualified staff was kept (Bhupesh Gupta however did not point out that in some states there were separate branches to watch the activities of Muslim organisations manned by non-Muslims). Reddy and Naik overruled the Home Ministry officials. But it was easier to silence Vajpayee than to tackle the bureaucrats. As a result the report of the Committee on Communalism was delayed and was the last to be submitted. Surprisingly, it was the least controversial and was the first to be approved at a sitting of the Council which began after dinner and continued till about midnight.⁸¹

The Conference recommended for the amendment of Section 153-A of the Indian Penal Code. Accordingly the Section was amended to "provide for punishment of communal activities, which term should be defined to mean any activity which promotes or attempts to promote on the grounds of religion, race, caste or community or any other ground whatsoever...feelings of enmity...or hatred between the communities. Taking the cue, both the Centre and the States

81. Ibid.

prosecuted various newspapers. On February 21, 1969 Chavan placed on the table of the Lok Sabha a statement showing the prosecutions launched. It was since up dated to June 30, 1969. The impartiality of the prosecutions launched by the Centre stood in glaring contrast to its lack in most State prosecutions over three quarters of which were against Muslim editors. In one case the Centre felt obliged to prosecute a non-Delhi monthly which the State government concerned had omitted to prosecute. Interestingly the rabid journals of many Senas were left at large.⁸²

The NIC also recommended that "the District Magistrates and Superintendents of Police should be made personally responsible for prompt action to prevent or stop communal disturbances ... offences should be investigated and offenders prosecuted promptly. Prosecution launched should not be withdrawn. Special courts with summary powers to deal with offences connected with communal incidents should be constituted."⁸³ If the Home Ministry had taken any action on these recommendations of the Council, it is not known.

Three Committees were set up by the NIC, one each on Communal threat, Regional menace and the other on educational aspects and mass-media. These Committees were set up to watch the situation from time to time and to see how far the decisions of the Council are being implemented. But curiously enough, much could not be achieved of these Committees. For instance "the NIC accepted the recommendation of the Committee on regionalism that the Government 'should take

82. A.G. Noorani, "Communalism is still our Major Problem", The Sunday Standard (Vijayawada), June 28, 1970.

83. Secular Democracy, July 1968, p. 10.

stern and effective measures against organisations like Senas that are provoking disturbances by appealing to the regional sentiments of the people'. In the two years that have passed since, the Shiv Sena has provoked more than one disturbance. If the Maharashtra Government has taken any stern and effective measures against it, it is one of its best kept secrets".⁸⁴

The NIC again met on March 20, 1969. The next day the NIC's sub-committee met for the first time and decided that "at its future meetings it would take up;

- '(a) a careful examination of the genuine, legitimate and deep-seated grievances of minorities especially in respect of discrimination in employment etc.
- (b) the desirability and feasibility of having a Commissioner for minorities with functions analogous to those of an Ombudsman, or of having any other suitable machinery to look into the grievances of the minorities and to suggest measures for redressing them.
- (c) In pockets where communal riots, looting and arson found to be chronic on an analysis of the past trends and figures, the desirability of constituting standing committees with proper guidelines to deal with group tensions, to prevent occurrence of incidents and to ensure communal harmony.... The Home Secretary informed the Committee in this context that there were four states, Andhra Pradesh, Bihar, Maharashtra and Uttar Pradesh, where two-thirds of the communal riots occurred. There were some pockets in West Bengal also. All the State Governments had been requested to make a study of the serious communal troubles within their territories and find out whether they had been tackled properly. It was a matter of regret that many of the States had not sent replies. 85

The NIC was once again convened on October 16, 1969 after the Ahmedabad riots. It issued a sermon to instil confidence in the

84. A.G. Noorani, op. cit.

85. Ibid.

victims of the macabre blood-bath at Ahmedabad. "The Standing Committee is of the opinion that the effective weapon for fighting communal conflict and disintegration is joint mass-campaigning and education by all political parties in favour of communal amity and harmony.... We are firmly opposed to the denunciation of minority community as being unpatriotic or an agency of any foreign power. Equally do we condemn the spread of the idea that any minority community requires to be Indianised or else it would be forced to leave the country."⁸⁶ These pious platitudes went unheeded by both Central and State administration. Riots continued to break out, resulting as usual in damage and waste. The Home Ministry proved absolutely ineffective in protecting the minorities from the frequent slaughtering in the so called communal riots. Even the recommendations of the AICC (R)'s Panel on minorities went unheeded by the Central Home Ministry. It recommended: "In case a riot continues for more than 12 hours the immediate local officers should be taken to task. If it is not controlled within 24 hours, the Home Secretary, the Chief Secretary and the Inspector-General of Police should be held responsible and if the violence go beyond 48 hours the responsibility must be placed squarely on the State Government."⁸⁷ The events preceding the passing of such a resolution provide ample testimony to the total disinterestedness on the part of the Ministry towards solving the problem of communal violence.

The NIC proved to be ineffective in providing remedies for the solution of the communal problem. The NIC alone, however, cannot

86. Ibid.

87. Ibid.

bring about a radical change in the atmosphere of the country, unless its recommendations and resolutions are properly implemented by the Governments, both Centre and State. Unfortunately the tendency in the frequent summoning of the NIC had been to win the confidence of the minorities especially the biggest minority in India, i.e., the Muslims. "They (Muslims) have and had been wronged grievously and persistently. And yet not only were the aggressor and the oppressed equated, but the invitations were so issued as to make them feel that the few Muslims were there by sufferance."⁸⁸

The political and economic aspects of communal problem have not been touched upon by any of the Committees constituted by the NIC. The half-hearted approach of the Council towards the parties preaching communal hatred and its reluctance to put a ban, despite several demands by eminent citizens of the country can only show the sympathy of the Council towards such elements. The infiltration of communalists in all the sectors of administration is not a secret, and is the direct outcome of the unrealistic approach by the NIC.

The persistent demand for promoting national integration, the efforts to fight the evil forces working under the banner of parochial communal nationalism, pseudo-secularism and pretentious socialism are being claimed by the Central and State Governments. But the Home Ministry has never cared to tackle it in a business-like manner. The NIC meetings have been reduced more to ritual rather than purposeful conferences calculated to mould public opinion. India is a vast and varied land comprising a large variety of people drawn from various linguistic, racial, regional and religious groups, the

88. "The Task of National Integration", Secular Democracy, August 1968, Vol. IV, No. 7, p. 31.

proper adjustment of which constitutes a prime necessity. If the fissiparous tendencies and the chauvinistic designs are to be connived at resulting into the luxurious growth of violence and dissension in the country, India is doomed. National integration does not in any way imply some sort of an utopia, where everyone will agree with everyone. It is a fruitful concept which can be the basis of any ordered, harmonious and peaceful living which would constitute the foundation of all economic and cultural progress which we are striving to achieve through our plans and projects. In an atmosphere of violence, arson and bloodshed, no country can make any progress, and the Home Ministry is primarily responsible for providing that healthy environment. If elementary principles of civilized living cannot be observed, not only all our claims to have a glorious past would be reduced to a sham, but our very existence will be endangered. The situation can be largely improved if cold-blooded murders committed on the occasion of communal riots, large scale arson, plunder and rape which are the order of the day during this period, are treated as ordinary crimes declared punishable under the Indian Penal Code and investigated and tried under the same spirit which our Constitution is pledged to preserve, the incidence of crime would inevitably decline. But as long as these communal riots are treated as some special type of 'monstrous festivals' after which some explanations are sought to be discovered or justifications cooked up to explain away the causes and circumstances of these riots from all quarters, whether political or administrative, there is no likelihood of the abatement of these bloody rituals which have become as frequent in our country as religious festivals. The Home Ministry which is called upon by the Constitution to deal with these matters

is legally and morally bound to eradicate this evil with single-minded devotion and a sense of supreme responsibility without in any way dilly-dallying with the situation as and when it arises.

RSS and Law and Order

Any study of law and order is incomplete without a reference to the RSS, the champion of militant nationalism and its sympathiser, the Hindu Mahasabha and the Jan Sangh, with whom the RSS has a close liaison. The RSS was founded in 19²5 by Hedgewar and his associates, who believed that "Hindus were the nation in Bharat, and that Hindutva was Rashtriyata, ... only Hindus could free Hindustan and save Hindu culture.... Hindu youth has to be organised on the basis of personal character and absolute love of the Motherland."⁸⁹ In the beginning the Organisation was mainly confined to Nagpur, the place of its birth. But, however, very soon its tentacles spread to other parts of the country especially North India (UP and Bihar). In 1931, the future chief of the RSS, M.S. Golwalkar joined the Organisation at Benares. With the death of the founder, Hedgewar in 1940, Golwalkar became the undisputed leader of the RSS. Since its very birth, the RSS believed in Hindutva and made no secrets of its creed, and openly poured the venom of communalism, to the consternation of the minorities especially the Muslims.

The true colours of the RSS came to the notice of the Government, i.e. the Home Ministry after the assassination of Gandhiji. The RSS was banned by an order of the Government but the ban could not last long and was lifted on July 9, 1949 on the assurance that the

89. Shri Guraji, the Man and His Mission (Bharat Prakashan, Delhi, 1957), p. 26.

Organisation would be run as non-political body in consonance with constitutional and democratic principles. They also accepted a written Constitution approved by the Ministry of Home Affairs. The conditions imposed by the Home Ministry hardly made any change. The RSS continued to make communal propaganda through press, public and private meetings and its political offshoot, the Jan Sangh. Organiser, the mouthpiece of the RSS and Jan sangh became the chief vehicle of mischievous propaganda against the Muslims. Speaking at Agra, Golwalkar was reported to have said;

The Congress cut the country into two. The Communists would cut into ten. The sole aim of the Rashtriya Swayam Sevak Sangh is to generate forces for the consolidation of the country from Kashmir to Kanya Kumari.... Muslims are lying low in wait for trouble. It is yet too early to base our policies on the assumption of their loyalty. 90

In the same tenor Bhayyaji Dani, the General Secretary of the RSS declared; "Hindus are loyal citizens of Bharat, as it is they who inherit everything in this land from times immemorial, with their nationality, language, history and religion inseparably bound up with the soil."⁹¹

The establishment of a Hindu Rashtra continued to be its creed. The RSS mentality has taken deep roots in the minds of a large number of people belonging to the majority community. Even the government service is not immune from its sympathisers. This was evident from the large number of government servants participating in the Satyagraha for lifting up the ban on the RSS. To a large extent these forces remained comparatively less assertive during the

90. Organiser (Delhi), Vol. 16, December 3, 1951.

91. Ibid., Vol. 10, October 20, 1952.

early days of Pandit Nehru's tenure. During the last days of Pandit Nehru RSS had become very active, and the Jan Sangh, its political wing very vocal and assertive. Its sharp edge was, however, largely blunted due to the secular and socialistic approach of the Prime Minister and some of his colleagues. The influence of the RSS and its chief M.S. Golwalkar increased tremendously during the short regime of Lal Bahadur Shastri which was revealed by frequent conferences between the Prime Minister and the RSS leader. For instance, on November 1, 1964, in regard to celebrations commemorating the birth of Sardar Patel, Golwalkar was one of the speakers.⁹² Similarly during India-Pakistan War in 1965, the RSS was allowed to take over civil defence work in Delhi despite the opposition of a large section of the ruling party. The officials of the Home Ministry did not assert themselves against such aggressive forces and indirectly allowed them to penetrate in all walks of administration. The attitude of the Government towards an organisation which was once banned was changed and the RSS and Jan Sangh became a force to reckon with because of its participation in the affairs of the State. This incidentally strengthened the hands of Golwalkar who went to the extent of suggesting to the Prime Minister not to go to Tashkent, but to seek assistance from the United States of America and fight to the finish. Despite mounting public opinion in favour of putting a ban on the Organisation, the Home Ministry, for reasons best known to itself, was reluctant to pursue the matter.

92. The other speakers being President Radhakrishnan, Morarji Desai (Finance Minister), Satya Narain Sinha (Minister for Parliamentary Affairs), Hafiz Mohammed Ibrahim (the Governor of Punjab) and the Socialist leader, Ram Manohar Lohia.

The broad proclamations of the RSS and the Hindu Mahasabha that they represent the interests of Hindus is only pretentious. The Hindu Mahasabha had opposed all progressive measures - be it the eradication of untouchability, building up of a casteless society, prohibition of child marriages, enactment of the Hindu Code Bill, etc. The philosophy preached by the RSS is in no way different from that of the Mahasabha and has always created tension in the Indian society.

Colwalkar in his Bunch of Thoughts has very frankly said; "The Hindu was told that he was imbecile, that he had no spirit, no stamina to stand on his own legs and fight for the independence of his motherland and this had to be injected into him in the form of Muslim blood. What a shame! What a misfortune that our leaders should have come forward to knock out the ancient and indomitable faith in ourselves and destroy our spirit of self-confidence and self-reliance which is the very life breath of a people! 'No Swaraj without Hindu-Muslim unity' have thus perpetuated the greatest treason to our society. They have committed the most heinous sins of killing the life-spirit of a great and ancient people." In another place he observes;

The non-Hindu peoples in Hindustan must either adopt the Hindu culture and language; must learn to respect and hold in reverence Hindu religion, must entertain no idea but those of glorification of the Hindu race and culture, i.e. they must not give up their attitude of intolerance and ungratefulness towards this land and its age-old traditions but also cultivate the positive attitude of love and devotion instead - in a word they must cease to be foreigners, or may stay in this

93. quoted by Subhadra Joshi, National Integration (New India Press), p. 14.

country, wholly subordinated to the Hindu nation, claiming nothing, deserving no privileges, far less any preferential treatment not even citizen's rights. 94

The RSS shakhas, private meetings of the RSS men, are but an exercise in hate and bigotry. It is with such poisonous thoughts as described above, that the RSS shakhas are conducted, and such distorted versions are absorbed by the young. The shakha meetings are not exclusively private. Even the educational institutions are not immune. The recent fuss over a building as belonging to the RSS donated by Malaviya had revealed the true colour of the RSS. The facts are that the RSS acquired, rather captured a two-roomed building on the Campus. The building is now claimed by the RSS to have been given by Pandit Malaviya himself. But the facts are quite different. In 1938, some teachers of the University wanted to start some cultural activities. The Executive Council of the University by its resolution granted permission on three conditions. A two-roomed building was constructed on the land belonging to the University in 1941. The three conditions were; the building would be used only for cultural work, no outsider would be allowed to take part in the cultural activities and lastly the University would have the right of resumption without assigning any reason.⁹⁵ This is how University buildings are sought to be utilized for polluting the atmosphere of the institution. The matter has been, several times, brought to the notice of the Government. The Government was hesitant in coming into direct clash with the RSS, which had a great nuisance value for the

94. M.S. Golwalkar, We or Our Nationhood Defined (Prakashan, Nagpur, 1947), pp. 55-56.

95. Grish Misra, RSS shadow over Benares Hindu University (New India Press, New Delhi), p. 2.

government in power. It is really a pity that "the RSS should be functioning within a university campus, reportedly with a building allotted to it and clearly with the blessings of the most powerful of the university authorities, is enough to cause deep concern among all those who believe that the educational system should lay the foundations for building of the secular, democratic India of the future. While the goings on in the BHU have come into the open that the RSS elements are quite active in other universities as well. There are many so-called teachers who are in fact agents of communal organisations whose aim is to corrupt and poison the young minds to the maximum extent possible."⁹⁶

There would have been no difficulty for Home Ministry to find out persons belonging to the RSS way of thinking and the Madhokian way of doing things. The Ministry, instead of acting as the beacon light to soften the atmosphere from the dangerous teachings of the RSS and the Jan Sangh, had overlooked the dangers endemic in such philosophy and had submerged in all-pervading darkness, to the detriment of national integration, secularism, democracy and Rule of Law. The RSS had been functioning contrary to the assurances and pledges that were given by it to the Ministry on the even of lifting the ban. The RSS functions in camera. There is no record of its members, no mention of the sources of its revenue, no evidence of permission being sought from parents of the young ones who attend these meetings.⁹⁷ What was surprising was that the RSS camps also impart effective training in weapon fighting etc. Wherever there

96. "Communalism: Total Combat, Not Halting Action", Mainstream, Vol. VII, No. 9, November 2, 1968, p. 8.

97. For details see, Secular Democracy (Editorial), August 1968, p. 8.

had been a communal riot, the names of the Jan Sangh and the RSS were associated with it. The Ministry did not take adequate steps to find out the truth in these allegations. Even the Dayal Commission Report had admitted that the attitude of the RSS and the Jan Sangh towards Muslims is one of the causes for the ugly flare-up in Ranchi.⁹⁸ That evidently implies two things; Firstly, the Ministry is unaware of the allegations or secondly it is aware of the allegations, but it does not want to investigate the whole affair. It is rather interesting to note that the Ministry claims to "have no evidence that the organisation was holding camps for giving training in the use of weapons".⁹⁹ When it is known all over the country that regular weapon training is imparted to the members of the RSS and whose photographs have also been printed, time and again, in the various leading magazines and newspapers, how can the Home Ministry deny its knowledge? This has also been brought to the notice of Parliament.¹⁰⁰ Despite all this the Ministry did little to root out such tendencies from the country. It is generally stated that a few bad characters disturb the peace of the state so frequently and on such a large scale. That can never be possible. Minor cases involving a few miscreants can easily be isolated and effectively dealt with. Large scale violence is not possible without prior planning and a clear strategy; and without a very powerful of the society including the administration supporting it or conniving at it. Nothing whatsoever

98. Report of the Commission of Inquiry on Communal Disturbances, p. 72.

99. The Indian Express (New Delhi), February 22, 1967.

100. See Frank Anthony's speech in Lok Sabha, Lok Sabha Debates, Vol. XXIX, No. 50, April 14, 1964.

can come in the way of the Ministry from taking action against groups, parties or persons indulging in communal propaganda and spreading misgivings between communities by fabricating stories, and preparing ground for a big holocaust. The Home Ministry should look into the matter, from the political, the administrative and the legal points of view. The secular goal, the very basis of our Constitution has to be preserved at all costs. It can be meaningful only if the disintegrating and law-breaking forces are being constantly checked. It is rather peculiar that the RSS claims to be a purely cultural organisation but the resolutions of the RSS on various political issues, for instance, its resolution on the Kutch Award, can by no means be considered as falling within the domain of cultural activities of the organisation. The fight against fissiparous tendencies, separatist moves and the law-and-order-disrupting mentality, can never be fruitful if responsible political parties do not shed away their expediency for minor and petty electoral gains. But the unfortunate tragedy with our political parties and leaders had been to patronise and shield anti-social elements. A.N. Jha, the Lt. Governor of Delhi laments, "the goondas in almost all the areas were patronised by the political leaders and whenever the police tried to take action against goonda elements, political influence was used to save them".¹⁰¹ A code of conduct for political parties may prove to be an effective weapon against political interference against cases involving the anti-social elements. The code of conduct should not be treated as a sacred mantra only to be chanted on the eve of elections or after the breakdown of law and

101. The Indian Express (New Delhi), July 26, 1969.

order. Any law or code is meaningful only when it is properly enforced without reservations. Crime should be treated and dealt with as a crime, whoever commits it. Individuals or groups whatever religion or political denominations they may bear should not be granted any immunity if they are found harming the life and property of the fellow-citizens. No cultural or ultra-cultural guise should be allowed to conceal their crimes nor should easy justifications be allowed to explain away the atrocities committed by them. The very purpose of having such a big and expensive organisation, as the Home Ministry happens to be, would be defeated if large scale and heinous crimes committed by hydra-headed mobs in broad day light, involving the lives and property of thousands of citizens are dismissed as trivial matters. Prevention is better than cure but if a situation prevails where there is neither prevention nor cure, the future of the political and social structure so assiduously built up by the architects of a new India would remain in a constant state of jeopardy.

Role of Police

The police helps administration in the maintenance of law and order in the state. The police is a state subject; but the Centre has at its disposal the Central Reserve Police, the Special Police Establishment, Border Security Force and the Armed Forces. Primarily States are responsible for the maintenance of law and order but ultimately it is the Centre i.e. the Home Ministry which owes responsibility to the representatives of the people^{i.e.} the Parliament. It is perhaps for this reason that the Home Ministry is entitled to deploy the CRP, BSF or the Armed Forces in any of the States where the ordinary police is found incapable of controlling a particular

situation involving the breakdown of law and order.

As has been pointed out above, the State governments are responsible for the maintenance of law and order, but if we minutely examine, we will find that it is not even the State governments but the District administration on whom falls ultimately the responsibility of maintaining law and order. It, therefore, follows that the District administration ought to be familiar with the intricacies of the problem. Lack of knowledge with regard to the law and order position may put the whole District in a state of anarchy. For instance, "a Tehsildar Magistrate made a desperate telephone call to the District and Divisional headquarters. The law and order situation was bad in his Tehsil and he was faced with a situation when he needed some military aid. As there were no troops immediately available in the Tehsil he had telephoned for some. He asked for a military battalion. Now a battalion troop is a very big force in terms of dealing with law and order situation. Fortuitously and because there was trouble in other places also, and the supply of troops was somewhat scarce, it occurred to somebody at the Divisional headquarters operations room to enquire as to how many men the Tehsildar Magistrate really thought he needed. So someone rang him up and said "you asked for a battalion of troops, how strong a force do you really need, and do you know what a battalion means". The poor Tehsildar had not simply acquainted himself with the military organisation. He had simply in excitement of the emergency, used the word battalion as a first formation that came into his head. When asked he said that he wanted about 30 men, and that is what he meant when he asked for a battalion. Now 30 men is a platoon while a battalion can be about 800 men. When there is fairly widespread

situation affecting law and order over an extensive region, it can make a vital difference as to how the available forces are deployed. And to make a mistake between a body of 30 men and 800 men in military formation can have fatal consequences".¹⁰² To cite another instance, "in a serious communal situation the population of a whole village was threatened with massacre. Troops were deployed to deal with the situation. As their commanding officers were unfamiliar with the geography, topography, and routes in that area, a senior Tehsil official, himself a magistrate, was assigned to guide the body troops to the village which was under threat. He led them along a canal road, and then simply lost his way, or so it was reported. The troops found themselves at a dead end, unable to get across country, and had to return. Meanwhile the population of the village were duly massacred. There were perfectly good road to it; only the troops were guided in the wrong direction".¹⁰³

During the British regime, inevitably, the police very often came into conflict with the public while dealing with political agitations. With independence the role of police became different in tackling situations involving lawlessness. Its outlook shifted from authoritarian to that of public service. Cordial relations between the police and the public form the sine qua non of a state wedded to building up of an egalitarian society. But if we look at the role of the police since independence we are apt to draw a gloomy picture of its performance as well as outlook towards the

102. S.S. Khera, District Administration in India (Asia Publishing House, New Delhi, 1964), pp. 99-100.

103. Ibid., p. 100.

public. Thanks to the colonial legacy, the gulf between the police and the public is as wide as the world itself. Even the Law Commission had to lament that one of the reasons that the police did not come to be regarded as their friend and guide is because they have used predominantly for the control of law and order.

The indifference of the police towards the public, instead of coming down after independence has shot up to unimaginable proportions. Frequent reports of deaths in police custody are not uncommon. "Recently in one state a man was arrested and taken to jail. In two hours he was removed to the hospital, where he died. No doubt the suspected to be guilty of foul play was placed under suspension pending enquiry. In such cases mere departmental punishments do not meet the ends of justice. Where the guilt has been clearly established the delinquent person should be prosecuted under the appropriate section of the penal code. If deterrent punishments are given in one or two cases there will be improvement in the position. It is also necessary that the rank and file of the police force are educated against the third degree methods".¹⁰⁴

Another instance is the death of Mr. Kunju Mohammad owing to the excessive use of police force.¹⁰⁵ All these aspects have to be considered by the Ministry. A number of representations have been sent to the Ministry in this regard. And the Deputy Minister in the Ministry of Home Affairs admitted in Parliament that fifty nine representations were received by the State government against the

104. New Administrator (Sardar Vallabhbhai Patel Institute of Public Administration, Madras), May 1965, p. 10.

105. See Lok Sabha Debates, Vol. XLVI, No. 22, September 15, 1965.

police excesses in Kerala during the last three months.¹⁰⁶ Similarly there is widespread discontent among people over frequent and indiscriminate police firing. For instance, "between 1948 and 1965, 24 judicial enquiries were ordered into incidents into which police had to resort to firing. Out of these, 18 enquiries justified police firing and only in three cases firing was not justified. The results of the remaining enquiries were awaited. In the same period 391 magisterial enquiries were ordered into such cases out of which 230 cases of police firing were held to be justified and in only 11 cases firing was not justified. The results of the remaining magisterial enquiries are awaited."¹⁰⁷

The gratuitous police vandalism has to be effectively checked by the Home Ministry, by awarding censure punishment for police involvement on the clumsiest issue. Police raids on educational institutions are also not uncommon. The way the Delhi police handled the situation in Indraprastha Bhavan on September 19, 1968 by manhandling the employees including the officers is an unparalleled event on the part of the police in the history of police in India. Their uncalled for interference with the daily routine of the Bhavan is absolutely unnecessary. The opposition in Parliament demanded of the Home Minister a judicial enquiry of the Indraprastha episode. Curiously enough the Home Minister shielded the entire episode by declaring "no useful purpose would be served by any further judicial enquiry".¹⁰⁸ At the same time he admitted that

106. For details see, Lok Sabha Debates, September 15, 1965.

107. G.L. Nanda, Lok Sabha Debates, Vol. XIV, No. 50, April 29, 1966.

108. The Hindustan Times, November 16, 1968.

"there was excessive use of force and it is very deplorable".¹⁰⁹ The Home Minister's assertion that judicial enquiries do not serve any useful purpose logically convey that the judicial enquiries held so far have not served any purpose. When the very custodians of law and order indulge in violence and unfair methods, there can neither be law nor order. That will retard all healthy democratic traditions. The Home Ministry, instead of going into the details of the racket, set aside the matter as something very negligible. This attitude of the Central Government further strengthened the hands of the police in further breaking down of law and order and they did not hesitate invading the precincts of Assemblies. The forceful entry of the police in West Bengal Assembly and the total manhandling of the Speaker and Members of the Assembly finds equally no parallel in the world history. On July 31, 1969 the West Bengal Assembly witnessed the most unruly scene when "about 500 policemen entered the House shouting 'Where is Jyoti Basu' and pulled down everything that came in their way, including mikes, chains, tables and Assembly papers and littered them all over the floor. In the mellee half a dozen members were injured, besides some members of the Assembly staff.... The Speaker adjourned the House and returned to his chamber. But the trouble did not end there. The policemen who were withdrawing re-entered the House, when someone told that Mr. Jyoti Basu was in the House. They went round the Ministers' rooms and knowingly or unknowingly, they forced their way in the Speaker's chamber. Some members who were with the Speaker tried to resist them but they failed.... Meanwhile the Speaker was helped out of his room through

109. Ibid.

a rear window and he managed to leave the precincts of the Assembly House in his 'car'.¹¹⁰ Whatever might have been the justification for this act, the fact remains that by indulging in such hooliganism the police had damaged their image and position in the eyes of the public. If they had any grievances they could have adopted the constitutional means instead of making a rush to the Assembly where even angels fear to tread.

Strikes and unrest have also become rampant in the rank and file of the police. For instance, in November 1966 "just on the eve of Sadhus March to Parliament on November 7, there was threat of an outbreak of police unrest synchronising with the cow agitation. At that time Nanda's intervention saved the situation, as Home Minister, he overruled the advice of officials including L.P. Singh's and handled the policemen with tact. But as it turned out, L.P. Singh had the ear of Dinesh Singh and the Prime Minister's circle. In fact, when Nanda resigned following Sadhus vandalism he publicly complained against his Home Secretary's extraordinary conduct. Nanda's exit did not improve matters. Chavan had the first taste of brewing crisis when the police parade in honour of the Home Minister had to be cancelled because of the policemen raising their long standing demands. After that, Chavan seemed to have left matters in the hands of officials, and little attention was given to this serious question. Throughout the period of this strike it was clear that Chavan was let down because of his reliance on these burra sahibs. It was so pathetic to find the Home Minister in almost a state of helplessness; the requisitioning of the Army to clear the strikers squatting before

110. Ibid., July 31, 1969.

Chavan's place was itself a testimony to the patent fiasco of the ICS bosses rule in the capital. To cover up their own failure, the officials on the one hand started dolling out bogus stories of improvement in incidents on the part of the strikers, while on the other, all owed large-scale assaults on the strikers. It was noticed by many that the wounded strikers before the Home Minister's residence were rendered first aid not by the police but the army personnel. And it was an embarrassing commentary on the entire Home Ministry's functioning, that the Border Security Force was called in to fight the Capital's police force and that too, it made a mess of it. The case for the defence for taking over the entire Border Security Force and for scrapping this expensive outfit under the Home Ministry could not have been more effectively put across than by the happenings in the Capital during the period of the police strike.¹¹¹

Frequent use of force and resort to firing is no good. Force, however, is necessary to deal with extraordinary situations, but what is not desirable is institutionalisation of force. The fatal problem of law and order has to be dealt with in all seriousness, for which a large share of responsibility lies with the police. Care, therefore, ought to be taken in the recruitment and training of police force and effective consideration be also paid to their pay and other benefits. Low pay will mar efficiency and breed bribery and corruption. Stringent measures should be taken to see that there is no political interference in the working of the police machinery. The penny-pinching attitude on the part of our leaders which unfortunately has become a permanent feature of our administration,

111. "Our ICS Maharajas", Mainstream, Vol. V, No. 34, April 22, 1967, pp. 7-8.

had to be done away with. Frequent reports of politicians' interference on behalf of black-marketeers and criminals are in no way exaggerated. The leaders and the ministers in a parliamentary system of government should adopt a healthy attitude towards the executive. A corrupt political set up is bound to have its repercussions on the administration. The efficiency of administration in other words depends on the efficiency and impartiality of political leadership. The administration also should not find political interference to be an easy excuse. In the event of its failure to preserve and maintain peace and tranquillity it should realise its mistakes and take steps to remove and remedy them. The general experience is that the politicians, both inside and outside the government, accuse the bureaucracy while the bureaucracy, in its defence, wails of undesirable political interference. Such an attitude makes the administrative action a sort of jig-saw puzzle which defies all efforts at solution. The same formulae is repeated time and again, with the result that the evils, inefficiency and malfeasance, are not eradicated and the situation of law and order continues to deteriorate.

Conclusion

Administrative complacency and corrupt political practices have created a pathetic picture of law and order in the country. The growing lawlessness instead of being treated as a party problem has to be treated as human problem and a national problem. Superficial platitudes can never combat the growing menace of lawlessness. Every proposal for the solution of the problem ought to take into consideration the human element and the interest of the nation. Pandit Nehru, by his political sagacity, kept an otherwise tottering administrative

structure well-knit to a large extent. His death marked the beginning of political anarchy and administrative confusion. Frequent resort to unconstitutional means for the ventilation of grievances had become the order of the day and on every issue, real or imaginary, we have had to witness agitations, accompanied by mass-violence, rampage and destruction. Nehru's successors chose to give up the beaten track. A few gaps in policy and conception, which even Pandit Nehru found it impossible to plug owing to social and economic compulsions have adversely affected its momentum, and men with constricted vision could not resist the temptation to exploit them. The administrative inaction has its inevitable effects on the law and order situation which, under the protective wings of the Home Ministry, has become a mere rationaliser of lawlessness rather than an effective instrument of peace and order. It may perhaps be largely due to its imperfect working and, to an extent, of incorrect understanding of its role in the implementation of various laws relating to the maintenance of peace and order and not because of any inherent defect that the law and order machinery appears to tread on the toe of some political high-up. This calls for ratification of its rules and procedures but not any basic change in the major functions of the Ministry.

If one looks at the headlines of various newspapers one is apt to think whether the Home Ministry has not outlived its utility. Frequent breakdowns of law and order have become so regular that now people are hardly surprised at these happenings. The breakdown of law and order is inevitably the reflection of the weak policy pursued by the Ministry in that direction. The Ministry surprisingly has

generally busied itself, in finding excuses for inaction. The policies of the Ministry do not embody the maximum but only the minimum effort, which the bureaucrats considered feasible. The implementing authorities had been kept free without a check by the Central Home Ministry. The strange spectacle of the State governments and the Central Government expressing divergent views on issues involving law and order and shifting responsibilities on each other is definitely a sign that the Home Ministry has failed as an instrument of the Government's primary function i.e. the liquidation of lawlessness.

The border states pose a peculiar dilemma before the Government and therefore should command the top priority of the Home Ministry. The betterment of the tribal people and the inhabitants of Hill areas also loom large as urgent tasks to be attended to by the Ministry. The regional and provincial feeling in different states is the inevitable result of the lop-sided policy pursued by the Home Ministry. The feelings had, very often, displayed considerable madness in the form of demonstrations, agitations, strikes etc. which are in no way in the interests of the unity of the country. Such fissiparous tendencies ought to be eradicated, root and branch. Mere appointing a Commission, after every agitation, will not suffice. The general impression is that the best way to avoid a crisis or to postpone an issue is to appoint a Commission and entrust the problem to it. By the time the Commission submits its report, everything becomes stale. The whole administrative machinery goes into a stupor till another similar situation would arise calling for the appointment of a fresh Commission. This practice of appointing commissions and throwing their reports in the waste-paper basket is

an expensive exercise in futility which the Home Ministry would do well to avoid if it wants to retain any prestige in public eye. Such an approach instead of solving problems complicates them.

India, at the moment, is very much lacking in evolving a common national consensus. We have undoubtedly an excellent Constitution which provides for all the ills under the sun. The postulates of the fundamentals of the Constitution have not yet been clearly defined. The frequent violations of its fundamentals go unchecked by both the Central Government as well as the State Governments. The rights of minorities, the question of national language, the plight of Harijans still remain the bone of contention in the Indian nationhood. A categorical assurance of all these basic postulates by the Home Minister is the call of the hour, without which the very purpose of having a constitution is defeated. Mere definition is not enough without effective implementation of these postulates. The constitutional provisions are there to be implemented and not to be treated as an Utopia, or as Holy Scriptures to be repeatedly sung in hours of crisis or distress. This requires a little administrative alertness and political insight on the part of the Home Ministry. The various repositories of sub-nationalism could not have come in the limelight without the political support to such organisations. It is no secret that a section of Congressmen have deep sympathies with the Shiv Sena in Bombay and Lachit Sena in Assam. Similarly to assume that the RSS had no political support at the higher level is far from the truth. All this and others need to be tackled more on political plane than purely on administrative lines.

The laxity on the part of the Home Ministry to a large extent has been responsible to the deteriorating situation of law and order. For instance "the violence in front of Parliament House on November 7, 1966 during the cow agitation and the situation created early this year (1967) by the Delhi Policemen's strike the Central Reserve Police replaced the Delhi Policemen and the Border Security Force, also a wing of the Home Ministry, replaced Central Reserve Police units.... One arm of the Home Ministry replaced another until the Army moved in."¹¹² This was how the Ministry acted wherever there was law and order situation, replacing unit after unit to bring under control the mounting lawlessness. The breakdown of law and order is quite understandable in a poverty-stricken country torn into numerous conflicting ideologies, but what is reprehensible is the utter incompetence of the law and order machinery to restore peace and normalcy. The crux of the problem lies in the fact that the administrative machinery would hardly pay any attention to the implementation phase. The failure of prohibition is one example. Imposition of ceilings hardly bore any fruit. The procurement of foodgrains has become practically a dead letter. For all this, there is no apparent reason except bad implementation and defective execution of various policies and programmes. It must be remembered that the problem of law and order cannot be tackled on purely party lines, it calls for efforts and sacrifices. These efforts should be disciplined and not in any way in a haphazard, shipshod and dilatory manner. The Home Ministry has very large jurisdiction. Its functions resemble to figures in

112. "Wide-Angle, Law and Order Conundrum", Mainstream Vol. VI, No. 9, October 28, 1967, p. 9.

twilight, they look extremely charming as long as one does not try to grasp them but when one tries to reach at its root, the output is hardly encouraging. The Home Ministry can best act as coordinator of policies of state governments, instead of calling the states to its tune, which had paid heavy dividends to the country in the past. The State Governments too have an equally greater obligation to that effect i.e. to seek the advice and assistance of the Central Home Ministry on such problems as law and order, which is of all-India significance. In the absence of both, there can be neither law nor order, which would be a liability for a developing polity.

Above all the subject of law and order needs a thorough scrutiny and a proper definition. At present every state has a concept of its own of law and order. The September 1968 Ordinance on the Central Government Employees provides an example. A number of states shared E.M.S. Namboodiripad's opinion on the subject of law and order and obviously Home Ministry's position was precarious. The problem of law and order no longer remained a Congress party problem as the hey-day of the Congress rule came to an abrupt end. In future the areas of conflict between Centre and States will further widen. The conflict between the State of West Bengal and the Home Ministry with regard to the deployment of CRP posed innumerable problems over the competence of the Ministry to deploy forces in any part of the country with a view to maintain law and order. All these need to be taken into consideration by the Ministry of Home Affairs.

CHAPTER VI

MINISTRY OF HOME AFFAIRS AND INDIVIDUAL FREEDOM

Liberty is the sine qua non of democracy. Liberty, however, does not connote absolute liberty or freedom for the rich or the strong or the party in power. Liberty to be real and meaningful has to be based on equality. Equality, in its turn, does not mean absolute equality. It means equality of opportunity and absence of discrimination and of privileges based on race, caste, colour or religion. As Jennings has put it: "the right to sue and be sued, to prosecute and be prosecuted, for the same kind of action should be the same for all citizens of full age and understanding, and without distinction of race, religion, wealth, social status, or political influence."¹ Liberty implies rights, political, civil, economic and social so as to enable every citizen to develop his personality fully and to contribute his mite to the development of society. This has been beautifully expressed in the preamble to the Constitution of India. The Preamble pledges to secure to all its citizens: "justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and opportunity and to promote among them all, fraternity assuring the dignity of individual and the unity of the nation".²

The essence of Justice as provided in the Constitution is the general well-being of the community. Every man acts according to his self-interest but his action would be just only if it promotes

1. Jennings, Law of the Constitution (University of London Press, 1952), p. 49.

2. Constitution of India (1950).

common good. Justice, therefore, implies on the part of the state, to strike a just balance between individual good and the social good. To fulfil the twin objectives of providing equality of status and of opportunity, the Constitution has made illegal all distinctions and artificial barriers on grounds of religion, caste, race, sex or place of birth.³ The age-old evil of untouchability was prohibited by the Constitution.⁴ The Constitution has guaranteed equality before the law and equal protection of the laws and has made the right justiciable.⁵ As a safety valve against executive encroachments, Article 32 provides the fundamental right to move the law courts in case of infringement or abridgement of any of the constitutional provisions guaranteeing liberty to the citizens. The Preamble promises to secure liberty of thought, belief, faith and expression, which the Constitution has explicitly provided in Article 19. To allow a man to say what he thinks, writes Professor Laski, is to give his personality the ultimate channel of full expression and his citizenship the only means of moral adequacy.⁶ As the American Supreme Court observes: "Civil liberties as guaranteed by the Constitution imply the existence of an organised society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses."⁷

3. Article 15.

4. Article 17.

5. Articles 14, 32.

6. A Grammar of Politics (George Allen and Unwin, London, 1930).

7. *Micky v Kausas*. 43F. Supp 739.

The Constitution apart from the fundamental rights ensuring individual dignity also lays down ample safeguards assuring procedural fairness. Article 20 for instance provides, no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor to be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence; (2) No person shall be prosecuted or punished for the same offence more than once; (3) No person accused of any offence shall be compelled to be a witness against himself.⁸ Similarly the various provisions in the Indian Penal Code, Criminal Procedure Code provide safeguards guaranteeing procedural justice. Suffice to mention here cross-examination, evidence, hearing before courts and the like.

While recognising the dignity of the individual, the Preamble clearly spells out its resolve to maintain unity of the Nation. The dilemma is to reconcile between liberty of the individual and unity of the nation, in the purposeful solution of which lies the happiness of the individual and safety of the state. The State should, therefore, be competent to place restrictions on individual freedoms in the interest of the nation. Realising the need for imposing restrictions, Article 19(2) had to be amended by the Amendment Act (First) 1951. The clause as amended enables the legislature to impose restrictions upon the freedom of speech and expression on grounds of security of state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, or

8. Constitution of India (1950).

incitement to an offence. One of the five reasons why the Home Ministry had come forward with this amendment immediately after the Constitution came into force was that the Supreme Court in case of Ramesh Thaper vs State of Madras refused to accept that security of state included public order. The Court observed: "unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of state and overthrow of it, such law can not fall within the reservation under clause (2) of Article 19, although restrictions which it seeks to impose may have been conceived generally in the interests of public order."⁹ The interpretation of the Supreme Court that local and ordinary breaches of public order do not come under the grounds restricting the freedom of speech guaranteed by the Constitution led to unimaginable extremes in some cases.¹⁰

The rights guaranteed to the citizens provide them legal relief from State tyranny. They provide immunity from unwarranted arrest and right to fair trial before an appropriate judicial authority. Every person who is arrested must be informed of the reason or reasons of his arrest and the accused has the right to have legal assistance.¹¹ Every person arrested shall be produced before the nearest magistrate within a period of twenty four hours.¹² Strict rules concerning evidence etc. are also observed. Forced

9. Ramesh Thapar vs State of Madras, SCR (1950), pp. 602-3.

10. Master Tara Singh vs The State (1951), DLR (Simla); Srinivasa vs State of Madras, AIR (1951), Madras 70 (SB) etc.

11. Constitution of India, Article 22 (1).

12. Ibid., Article 22(2).

conviction of crime is prohibited by law. The confrontation is between supremacy of law and State power. The rights act as the "yardstick for the evaluating the actions of Government to keep away from any possible encroachment upon them".¹³ As Justice Jackson of the American Supreme Court has observed in Board of Education v Bernette, "the very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy to place them beyond the reach of majorities ... and to establish them as legal principles to be applied by the courts. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly and other fundamental rights may not be submitted to the vote; they depend on the outcome of no elections".¹⁴ This demands certain vigilance on the part of citizens. "Ordinarily this will be a hide and seek game between the State and the individual and everyone would be on the look out of an opportunity of challenging the other. Circumspection on either side would be easier, if the demarcation lines are accurately drawn, as they had been done in Bill of Rights in England, and both sides are made aware of limitations on their respective powers".¹⁵ This does not imply the game of I scratch your back, you scratch mine. It only implies consciousness and realisation on the part of citizens of their rights and obligations.

As pointed out earlier liberties are not absolute. Every right is subject to constitutional limitations as well as

13. S.C. Dash, The Constitution of India (Chaitanya, Allahabad, 1968), p. 433.

14. (1943) 319 US 624.

15. S.C. Dash, op. cit., p. 433.

restrictions imposed on the exercise of rights by Legislature. There are divergent opinions regarding the authority to determine whether the imposed restrictions are really reasonable. D.D. Basu opines; "the Indian Constitution has adopted the principle of judicial supervision of legislative and executive action from the American Constitution. It is for the court to determine whether the restriction is reasonable; the determination by the legislature is not final."¹⁶ An altogether different view was expressed by Chief Justice Kania in Gopalan's case. He observed;

What is the right given by Article 21? The only right is that no person shall be deprived of his life or liberty except according to procedure established by law. One may like that right to cover a larger area, but to give such a right is not the function of the court.... It is obvious that in that clause, law must mean enacted law.... That deliberate omission of the word "due" from Article 21 lends strength to the contention that the justifiable aspect of the "law", i.e. to consider whether it is reasonable or not by the court, does not form a part of the Indian Constitution.... By adopting the phrase "procedure established by law", the Constitution gave the legislature the final word to determine the law. 17

There is every possibility of a deadlock between Parliament and Judiciary in the absence of clear provisions in the Constitution. Whatever that might lead to, the fact, however, remains, that the Supreme Court in India do not enjoy the same status as the American Supreme Court. The insertion of 'procedure established by law' in Article 21 strengthens the position of legislature vis-a-vis the Judiciary. The following chapters are an attempt at a critical analysis of the abuse of individual freedom especially in the context of Preventive Detention Act and the Emergency Provisions by the Executive under the overall control of the Central Home Ministry.

16. D.D. Basu, Commentary on the Constitution of India (Sarkar, Calcutta, 1952), p. 94.

17. SCR (1950), pp. 111-13.

Preventive Detention and the Home Ministry

Preventive Detention means the detention of a person to prevent him from indulging in any activity prejudicial to the interests of State or involving crime or anti-social activities. It implies detention of a person before committing actual crime. Ordinarily when a person is arrested he must be produced before the nearest Magistrate within twenty four hours and be informed of the grounds of his arrest and has the right to be defended by a legal practitioner of his choice. These facilities do not extend to persons detained under the law providing for Preventive Detention.¹⁸

Preventive Detention is not new to the Indian Constitution (1950). Before the present Constitution came into force, the provinces were authorised under the Government of India Act, 1935 under item I of list II to legislate "on Preventive Detention for persons connected with the maintenance of public order". In Machindar Shivaji's case,¹⁹ the Federal Court "rejected the contention of the appellant that it was not within the competence of the Province to make the "satisfaction" of the executive the criterion of detention and to put such subjective satisfaction beyond judicial review. So long as the authorised detention was for the purpose of maintaining "public order", it was intra-vires of the Provincial Legislature and once the "legislature is found to have acted within its powers, the Court is not concerned with the terms and conditions on which the executive authority has been empowered to order

18. Constitution of India, Article 22 (3).

19. AIR (1950) Federal Court 129.

preventive detention, for these are matters of policy."²⁰ It must be noted that the 1935 Act made no provision for civil liberties which the legislatures may not abridge. And, adopting as their model the relationship between the English courts and English Parliament, the courts in India refrained from forging any implied limitations on the legislative powers.²¹

In short, before 1950, the position with regard to preventive detention was that the provinces were authorised to detain any person in the interests of the maintenance of public order. Secondly, the detainee had to be furnished with the grounds of detention. Thirdly, the detainee had the right to make a representation against the order of detention. Fourthly, the courts could determine the validity of the grounds of detention and satisfaction of the executive. However, courts jurisdiction did not extend in respect of the truth of the material on which the executive satisfaction was based and the sufficiency of the material to make an order of detention.

The Constitution of India authorises the Union Government, under entry 9 of the Union List, to make provision for preventive detention for reasons connected with foreign affairs, defence or the security of India. The Concurrent List also provides for preventive detention for reasons connected with security of State, the maintenance of public order or the maintenance of supplies and services essential to the community.²² Thus, both Central Government

20. P.K. Tripathi, "Preventive Detention; The Indian Experience", American Journal of Comparative Law, Vol. IX, Nos. I-W, Spring 1960, p. 224.

21. Ibid., pp. 224-5.

22. Entry 3.

and State Governments can act in regard to preventive detention. But in practice, the primary responsibility²³ of arresting a person rests with the State Government. Besides looking after the detainees is also the responsibility of State Government as they are constitutionally empowered with the maintenance of prisons, reformatories etc.²³ The overall responsibility lies with the Central Home Ministry as far as the policy regarding such laws are concerned.

The source of the Act is to be found in Article 22 of the Constitution. It is curious, as Justice Mahajan has very rightly pointed out that this subject has found a place in the Constitution in the chapter on Fundamental Rights.²⁴ Fears were projected in the Constituent Assembly during discussions on Fundamental Rights especially Article 22 which confers upon every citizen "the right, the fundamental right of being detained without trial".²⁵ Many a Member of the Assembly voiced their doubts that Article 22 may be utilised as stock-in-trade for manhandling the political opposition. Professor K.T. Shah, to give one instance, observed;

the Chapters like those dealing with Fundamental Rights and Civil Liberties or the Directives of State policy, are not what they well might have been. The wording of the articles give much more verbal promise, than holds out any hope for actual performance. Almost in every case, in every article, in every clause and in every sentence of each clause, the right is given, conferred or declared either restricted, conditioned, or made dependent upon certain contingencies that may or may not happen. There is nothing to show in the entire constitution that efforts will be made to see that these Rights

23. State List, entry 4.

24. Gopalan v State of Madras, SCR (1950).

25. H.V. Kamath, Lok Sabha Debates, May 30, 1956.

and Liberties are not merely paper rights, but they will be made real, actual, living possession and enjoyment of the people. ²⁶

Article 22(4) provides; "no law providing for preventive detention shall authorise the detention of a person for a longer period than three months ... unless (a) an Advisory Board has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention".²⁷ Clause (7) of the same article arms Parliament to (a) prescribe the circumstances under which, and the class or classes in which a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board. Parliament is, thus, empowered by the Constitution, to detain a person for more than three months without obtaining the opinion of the Advisory Boards. It is well to remember that constitutions are not made for a year or two. They last for decades and centuries and, therefore, have to visualise various contingencies from different points of view. It is perhaps with this intention that Article 22 was inserted in the Constitution arming the executive with the extraordinary power of preventive detention. Such laws are usually applied in grave emergencies, when the very safety of the nation is at stake. During peace time resort to such laws would be a negation of law and liberty. Frequent resort to preventive detention, irrespective of the circumstances, simply because the Constitution provides to that effect should not have been made nor it should have been continued for a day more than is actually

26. Constituent Assembly Debates, Vol. XI, November 17, 1949.

27. Constitution of India (1950).

warranted by circumstances as provided for in the Constitution. It is in this light that the functioning of the preventive detention Act is examined below.

The detaining authority, i.e., the District Magistrate, Additional District Magistrate, especially empowered in this behalf by the State Government or the Commissioner of Police for Bombay, Calcutta, Madras or Hyderabad, Collectors in the State of Hyderabad, must report the matter to the State Government along with the grounds of detention and other particulars, as "in his opinion have a bearing on the matter".²⁸ It means that the detaining authority need only furnish particulars as considered just for detention; he is under no obligation to furnish all the particulars with him. A person can be detained by the District Magistrate if he is satisfied that the actions of a particular person will put the safety or stability of state in jeopardy or is detrimental to public interest or public order. The word "satisfaction" is too vague and illusory; anything under the sun can come under the head "satisfaction". Criticising the theory of subjective satisfaction, Lord Atkin in the famous Liversidge Case observed:

I hate this doctrine of subjective satisfaction.... Just think I have a broken ankle, it is a subjective thing. If I am satisfied that I have a broken ankle, it is to my satisfaction that I have a broken ankle, it is to my satisfaction and there is no end to it. No objective test can be applied, no evidence, nothing can be done. ²⁹

The detaining authority, then reports the matter to the State Government to which he is subordinate. The State Government on the

28. Preventive Detention Act (1950), Section 3.

29. Liversidge v Anderson, AC (1942).

basis of facts supplied to it, either approves or revokes the order. This arrangement ensures a little fairness provided full facts are placed at the disposal of the State Government. The State Government then reports the fact to the Central Government i.e. the Ministry of Home Affairs, which acknowledges the cases and the matter ends. It is not clear in the Act about the jurisdictional competence of the Ministry of Home Affairs as far as the working of the Preventive Detention Act is concerned. The final authority of reviewing the detention cases should have been reposed in the Central Home Ministry as that would have provided the detenu a chance, though very remote, of further consideration of the case by the Central Government.

The detaining authority must communicate to the detenu, within five days from the date of detention the grounds of his detention and shall afford him the earliest opportunity of making a representation against the order.³⁰ The facts may not be disclosed if such disclosure runs contrary to public interest.³¹ The Act provides for the reference of each case to an Advisory Board along with the representation of the detenu, if any, and the report of the detaining authority within 30 days from the date of detention.³² The Advisory Board may call for such information as it may deem necessary.³³ The Act provides that nothing in the Act shall construe as giving the detenu the right of being defended by any legal practitioner.³⁴ The

30. Preventive Detention Act (1950), Section 7 (1).

31. Ibid., Section 7 (2).

32. Ibid., Section 9.

33. Ibid., Section 10 (1).

34. Ibid., Section 10 (3).

Board after considering the pros and cons of the case decides whether there is sufficient cause for the detention of the person concerned.³⁵

The report is to be submitted within ten weeks from the date of detention.³⁶ If the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned,

the appropriate Government shall revoke the detention order and release the person.³⁷ Now the question that is bound to arise is; is

the Government going to pay compensation to a person who has been wrongly detained? The Act is silent on this. It must be remembered that not all categories of persons detained, however, were entitled to the privilege of having their cases referred to an Advisory Board.

The privilege was extended to persons whose prejudicial activities might jeopardise the public interest or the maintenance of supplies and services essential to the community but not to those whose liberty threatened "the defence of India, the relations of India with foreign powers or the security of India", or "the security of the State or the maintenance of public order". In these cases, the Act said, a person "may be detained without obtaining the opinion of an Advisory Board for a period longer than three months, but not exceeding one year from the date of his detention". Their cases must be "revised" by the Government within six months from the date of detention, in "consultation" with a person who is qualified to be appointed as member of the Advisory Board.³⁸

35. Ibid., Section 10 (2).

36. Ibid., Section 10 (1).

37. Ibid., Section 11 (2).

38. P.K. Tripathi, op. cit., p. 228.

The Board is constituted of members who are in the confidence of the Government. Not only that the Government need not disclose the facts in the public interest etc. but the proceedings of Advisory Board and its report excepting that part of the report in which the opinion of the Advisory Board is specified shall be confidential.³⁹ Thus, the Government as well as the Board are at liberty to keep a part of the proceedings confidential, if in its opinion, the exigencies of the situation so demands. The Board is authorised to call for the relevant information from the Government, but here again, relevant information means the information at the disposal of the Government, the disclosure of which, is not in either public interest or security or stability of the State. In case of England, it is invariably the practice of the Advisory Committee to put before these persons so explicitly as they can all the facts which are known against them.... When he, that is the detainee, goes to the Advisory Committee, every fact which can possibly be put to him is put to him by the chairman of the committee at the hearing.... Witnesses can be called and are called in many cases.⁴⁰ In case of India, even if the grounds supplied to the detainee are vague and unsatisfactory, neither the detainee nor the courts can question their validity, because the detaining authority will simply point out that it is not in the public interest to disclose the grounds of detention.

As a corollary it follows that the Government can detain any one for three months and if the detainee is found innocent by the

39. Preventive Detention Act, Section 10 (3).

40. See Home Secretary's Statement, House of Commons Debates, July 23, 1941.

Board he is let off, only at the end of three months. The Act made no distinction between arrest and detention. A person may be arrested on mere suspicion and later he may be released by an order of the Magistrate but in the meantime substantial harm can be done to the concerned individual. Prior to 1951, the opinion of the Advisory Board was not mandatory, but, in 1951 the Ministry of Home Affairs curtailed the executive power by making the decision of the Advisory Board binding on the executive. With this amendment the Government was bound "to lay before the Advisory Board the grounds of detention plus the representation of the detainee and any report from the officer, namely, the District Magistrate, who may have in the first instance, passed the order ... the Advisory Board may ask for such information as it thinks fit, both from the appropriate government and the person concerned".⁴¹ However, the right to investigate facts by the Advisory Board on its own was not conferred upon it. It would have displayed fairplay and justice if the Advisory Board had been empowered to investigate matters in doubtful cases, with the aid of the intelligence network of the Ministry of Home Affairs. In the absence of such a provision, honest dealing is hardly expected.

The Home Minister (Dr. Katju) went a step further towards the so-called liberalisation of the Act by accepting Pataskar's amendment which provides; "the Advisory Board shall after considering the material placed before it and, calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if in any particular

41. Dr. Katju, Parliamentary Debates (House of the People), Vol. IV, No. 7, August 6, 1952.

case it considers it essential so to do if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within ten weeks from the date of detention.⁴²"

Despite many amendments the right to detain a person for three months remained unchanged; beyond which the opinion of the Advisory Board is to be sought compulsorily. The Act was liberalised by making provisions for the early disposal of cases. Hitherto, the position as pointed out by Shrimati Durga Bai was: "only two weeks ago, some thirty eight petitioners came up before the Supreme Court from Assam and Bengal. ... the executive had not even cared to refer those cases to the Advisory Board for weeks. In some cases four months had elapsed and the detenues were not supplied with the grounds of detention, and the supplementary grounds of detention went to the Advisory Boards very much after the time. In this way the power was abused."⁴³ Healthy safeguards were no doubt adopted but they were hardly implemented due to complacency on the part of the local authorities, which is a reflection of loose supervision and gross dereliction of duty on the part of the Ministry of Home Affairs. Instead of these seasonal amendments which created more fog than light, a Judicial Committee, as proposed by Deshpande,⁴⁴ Member of Parliament, should have been appointed for a thorough screening of cases, where grounds are insufficient or unsatisfactory, and the

42. Parliamentary Debates (House of the People), Vol. IV, No. 7, August 6, 1952.

43. Ibid., Vol. VIII, No. 7, February 13, 1951.

44. Ibid., Vol. IV, No. 7, August 6, 1952.

officers found to have acted mala fide would have been dealt with according to the rules prepared by the Central Home Ministry. That way it would have provided some consolation to the detainees that a judicial commission will be investigating their cases, and the detainees, to a large extent, have not felt aggrieved.

At the time of introducing the Bill for Preventive Detention, the then Minister for Home Affairs, Sardar Vallabhai Patel told the House; "certain judicial pronouncements or decisions which have been made during the last couple of weeks, and certain legislation which is pending before the Courts have created a situation, in which, I feel, having regard to the conditions prevailing today, that unless this House takes immediate action, a grave peril to the security of the State is involved. That, therefore, is my justification for approaching this House with this piece of legislation...."⁴⁵ He continued; "recently the judgement of the Patna High Court declaring the local Public Safety Act as ultra vires of the Constitution has created difficulties in that State. The Calcutta High court is already cognisant of applications made by 350 detenus who, I am assured, are some of the most dangerous. That is coming up on Monday for final decision. The Bombay High court has also released some of the detenus the other day because they find that it was contrary to the provisions of the Constitution to keep them under detention any longer. The High Court of Allahabad has also issued an order declaring certain provisions of the Public Safety Act to be inconsistent with the provisions of the Constitution. The judicial pronouncements have, therefore, created a situation in which more

45. Ibid., Vol. II, No. 2, February 25, 1950.

than one State in which it would no longer be possible for us to keep under detention persons about whose dangerous and subversive activities the State Government have no doubt.⁴⁶"

It is obvious, the legislation was introduced due to fear on the part of the Home Ministry from the judicial side. It was thought that the ordinary law was insufficient to meet the exigencies of the situation. As Sardar Patel has put it, "obedience to law should be the fundamental duty of a citizen. When the law is flouted and offences are committed, ordinarily there is the criminal law which is put into force. But where the very basis of law is sought to be undermined and attempts are made to create a state of affairs in which, 'men would not be men and law would not be law', we feel justified in invoking emergent and extraordinary laws."⁴⁷ The Ministry failed to check the subversive activities in the country with the help of the ordinary law of the land and had to seek the help of an extraordinary law like the preventive detention, which in the course of time, had been flagrantly violated and misused by the executive and the Ministry failed to check such violations.

Section 10(3) of the Act, as pointed out earlier, debars the detainee from legal assistance. Commenting on this Section, the then Home Minister, Katju observed; "the detainee would be far better off if he were to go himself personally, unhampered by lawyers, because, then, he would be far more likely to succeed than if he were accompanied by a lawyer with the atmosphere that a lawyer always takes with him."⁴⁸ In 1952 when the Bill was referred to the Select

46. Ibid.

47. Ibid.

48. Lok Sabha Debates, Vol. X, No. 27, December 21, 1953.

Committee, a majority of members insisted for the inclusion of the provision of legal assistance to the detainee and the right to summon witnesses, cross-examination etc. which was not accepted by the Home Minister. On the contrary he pleaded with the members: "if you do so, then why should the detainee have the benefit of the service of three High Court judges.... It is an expensive proposition."⁴⁹ The arguments do not seem to hold much conviction. By the same logic why should the lawyers be engaged with the benefit of witnesses and cross-examination in the various law courts including the Supreme Court? Let the judges themselves decide the case in the light of the facts placed before them. It should not be forgotten that ordinary and inarticulate persons and even the educated elite, find quite unable to argue their cases before a Board without legal acumen. Similarly the Board can hardly arrive at a reasonable decision, however sympathetic and eminent the members of the Board may be, if the ins and outs of the case are not fully exhausted. This arrangement made the fate of the detainee dependent entirely on the Board. The inaccessibility of the detainee to the Government sources resulted in the supremacy of the governmental convenience over individual freedom, natural justice and the basic canons of jurisprudence. As Webster, the well-known lawyer in the famous case of Dartmouth College has ably put it: "Law is something more than a mere will executed as an act of power. Law means that which hears before it condemns, which proceeds upon enquiry and renders judgment only after trial."⁵⁰

49. Ibid., Vol. IV, No. 3, August 1, 1952.

50. Quoted by N.C. Chatterjee, Lok Sabha Debates, Vol. IX, No. 21, December 11, 1954.

The motive behind the Preventive Detention Act was to check the rise of communists to power through subversion. The Home Ministers and their protagonists repeatedly emphasised the need for such a law to meet what they call the communist designs or the communist menace. By the same line of thinking, if the communist menace do not end, is it desirable to continue such an undemocratic law under the very nose of a democratic Constitution? The communist menace could have as well been challenged on the political plane by introducing suitable reforms in various fields, improving the living conditions of the teeming millions, building up of the economy of the State, thereby gaining the confidence of the people. This heckneyed and absolutely frivolous way of doing things produced inevitable results. Neither the communist menace could be checked nor could the Ministry gain the public confidence. Curiously the communists saw in the preventive detention, a heaven-sent device for the political blackmail of the executive, of which the Home Ministry constitute a limb. The results of the General Elections in Kerala in 1965 bear testimony to this.

At the time of introducing the bill, Sardar Patel declared;

I have passed two sleepless nights when I was asked to take up this measure. The States have sent frantic messages and I have sympathy for them. When four hundred or five hundred people are let loose in a State, the problem of maintaining law and order there becomes very difficult. The whole of the city of Calcutta was on strike. Why? Because some people distributed leaflets on what is happening in East Bengal. Who is to support this government to keep law and order there? Am I to allow hundred of detenus to be let loose in the city of Calcutta day after tomorrow? 51

51. Parliamentary Debates (House of the People), Vol. II, No. 2, February 25, 1950.

He continued;

I appreciate what is civil liberty, but I hate criminal liberty, to commit criminal violence against innocent people and, therefore I am taking precaution to guard the liberty of innocent people. That is my sacred duty. 52

The urgency of the situation made the Act passed with fewer voices of dissent. Initially it was passed for one year but year after year it was extended and was continued for about two decades, and even two decades of preventive detention failed to bring the desired result. The failure on the part of the Home Ministry has been admitted by the Home Minister himself; "Let it be clearly understood that I make no commitments on behalf of Government because I do not see so much efficiency in our own government...." 53

Time and again, fears and apprehensions were voiced on the floor of the House about the possible misuse of the Act which unfortunately went unheeded. Professor K.T. Shah's apprehension came true. He said in 1951: "Will the law really apply to these truly anti-social elements? Very often these are liable to be confused with people who may be carrying on an ideological campaign?.... The black-marketeer and the profiteer may escape by adding to corruption already prevailing while the legitimate political agitation may be penalised." 54 The subsequent events confirmed it and all the assurances and platitudes of the Home Minister belied the hopes of the people and breded suspicion in

52. Ibid.

53. Rajagopalachari, Parliamentary Debates (House of the People), Vol. VIII, No. 5, February 9, 1951.

54. Ibid., February 12, 1951.

the minds of the citizens of the politically-motivated actions of the Home Ministry.

What was worse was that even Foreign Affairs was made one of the grounds for detention. The proposition is absolutely superfluous and non-sensical. It is necessary in a democracy to express one's own opinion on different aspects of national life including foreign policy, which may run contrary to the official version. Simply because a citizen holds different views on foreign policy from that of the Government did not in any way justify the innovation of the preventive detention act. As Hiren Mukherjee has pointed out;

If to be critical of the foreign policy of our country, if to suggest from time to time whenever we think fit certain changes in the foreign policy of the country, is to disturb our relations with foreign countries and therefore invite the action of the preventive detention Act, then surely that is an absolutely intolerable proposition. 55

Preventive Detention in other Countries

Nowhere in a democratic country do we find this power of preventive detention being exercised in such an arbitrary manner as in India. In case of England the Home Secretary personally looks into detention cases and without his advice no one can be detained. In the United States, the Internal Security Act was passed on September 23, 1950, which provides for detention of persons. But the detainee has to be brought before the Detention Review Board within forty-eight hours of his detention. He is entitled to retain a counsel and has the right to preliminary examination and to refrain from making any statement. He will be detained only after the

55. Ibid., Vol. IV, No. 6, August 5, 1952.

Hearing Officer decides that there is sufficient cause for his detention. The detenu is also entitled to appeal to the Detention Review Board and the Detention Review Board within a period of forty-eight days after a petition has received shall hear and decide whether the person shall be released or detained. Not only this, the court has the power to set aside the order of the Board. The Act went two steps further to the British India Government as far as the Preventive Detention Law is concerned. The Government of India Act, 1935, empowered the Union legislature to legislate on subjects connected with defence, external affairs or the discharge of functions of the Crown in relation to Indian States and to Provincial Legislatures for reasons connected with the maintenance of public order, but the democratic constitution of independent India added to the causes for detention even supplies and services essential to the community. Even in the worst days of British rule when riots, tumult and confusion became the order of the day, especially before 1939, special acts were enacted and extended only to the disturbed areas and not to the entire territory of India. This was the position during the alien rule. But our popular Government made use of the Act in and out of season, throughout the country, which goes against the grains of equality, liberty and decent political life. Even the Rowlatt Act of 1919 provided;

if the Governor-General is satisfied that in whole or any part of British India, anarchical or revolutionary movements are prevalent to such an extent that it is expedient in the interests of public safety, he may, by notification in the Gazette of India make a declaration to that effect, and thereupon the provisions of the Act shall come into force in the area specified in the Notification. 56

56. Government of India Act, 1919, Article 33.

To put in the words of Justice Fazl Ali:

I am aware both in England and America and also in many other countries, there has been a reorientation of the old notions of individual freedom which is gradually yielding to social control in many matters. I also realise those who run the state have very onerous responsibilities and it is not correct to say that emergent conditions have altogether disappeared from this country. Granting then that private rights must often be subordinated to public good, is it not essential in a free community to strike a just balance in the matter? That a person should be deprived of his personal liberty without a trial is a serious matter, but the needs of society may demand it and the individual may often have to yield to these needs. Still the balance between the maintenance of individual rights and public good can be struck only if the person who is deprived of his liberty is allowed a fair chance to establish his innocence, and I do not see how the establishment of an appropriate machinery giving him such a chance can be an impediment to good and just government. 57

The application of the Act was kept under darkness from the representatives of the people. Katju, commenting on it observed: "the idea of detention is not to give advertisement, but to secure the object of preventing a breach of law and order".⁵⁸ The intentions of the Minister were definitely good but in the name of secrecy, power under preventive detention was grossly misused by the District authorities and the tardiness of the Home Ministry worsened the situation. Figures were supplied, but they were hardly sufficient for a clear understanding of the working of the Act. In the absence of relevant information recourse be taken to judgements of the supreme Court and the various High Courts. But the tragedy with the judgements is that when two judges sit three decisions will come out.

57. *Gopalan v State of Madras*, SCR (1950), p. 188.

58. Parliamentary Debates (House of the People), Vol. I, No. 18, February 28, 1952.

Except a few paragraphs from the statement of grounds referred to by the courts other details are kept confidential. The newspaper reports are generally one sided dealing with the problem from a particular viewpoint; and on the basis of it objective study is rather difficult to undertake. The peculiar provisions of the Act made the opposition parties create capital out of it for which the entire responsibility can be squarely placed on the Ministry of Home Affairs.

The jurisdiction of the Law courts were deliberately appropriated by the executive through the Act. Under the Act it is only the District Officer who is to be satisfied and the law courts cannot intervene. Their role resemble to mere silent spectators. Dr. Ambedkar, speaking on Article 22 declared in the Constituent Assembly;

for myself I can not altogether omit the possibility of a legislature packed by partymen making laws which may abrogate or violate what we regard as certain fundamental principles affecting the life and liberty of an individual. At the same time I do not see how five or six gentlemen sitting in the Federal or Supreme court examining laws made by the legislature and by dint of their individual conscience or their bias or their own individual prejudice be trusted to determine which law is good and which law is bad. 59

With this background Article 22 was inserted in the Constitution. "The absolute supremacy of the legislative authority", as Justice Das has observed, "has, however, been cut down by Article 21 which delimits the ambit and scope of the substantive right to life and personal liberty by reference to a procedure and by Article 22 which prescribes the minimum procedure which must be followed. In

59. Constituent Assembly Debates, Vol. VII, December 13, 1948, pp. 853-4.

this situation the only power of the court is to determine whether the impugned law has provided some procedure and observed and obeyed the minimum requirements of Article 22 and if it has, then it is not for the Court to insist on more elaborate procedure according to its notion or to question the wisdom of the legislative authority in enacting the particular law, however harsh, unreasonable, archaic, or odious the provisions of that law may be."⁶⁰

Despite the assurances of the Home Ministers from time to time that the Act will not be violated, and the judgements of the law courts declaring certain arrests made under the Act as ultra vires of the Constitution, practically nothing was done by the Home Ministry. Deprivation of personal liberty under Preventive Detention Act was not subject to judicial review. "The scope of the review is simply to see whether any particular law imposes any unreasonable restrictions. Considering that the restrictions are imposed on a most valuable right, there is nothing revolutionary in the legislature trusting the Supreme Court to examine whether an Act which infringes upon that right is within the limits of reasons."⁶¹

As soon as a person is arrested under the above Act, the detaining authority shall communicate the grounds of his detention and shall afford him the earliest opportunity of making a representation against the order. The courts can only examine "whether the grounds furnished to the detainee are sufficient for the purpose of making a representation against the order, but they can not question whether the grounds are sufficient to justify detention".⁶²

60. Gopalan v State of Madras, SCR (1950), p. 319.

61. Fazl Ali, Gopalan v State of Madras, SCR (1950), p. 157.

62. Vaidya v State of Bombay, Supreme Court Journal (1951), p. 208.

The case of Asutosh Lahiri speaks of the irresponsibility of the executive and the utter silence engulfed the Ministry of Home Affairs. The Supreme Court by way of discourse to the Home Ministry declared;

Legitimately doubt arises as to the necessity or propriety of making use of the provisions of the Preventive Detention Act against the petitioner. He is not an inhabitant of this place and does not normally carry on his activities in Delhi. He resides habitually in West Bengal and came to Delhi only to attend certain meetings. If as the District Magistrate thought his presence at that time in Delhi might lead to some disturbance of communal peace, there were certainly ample powers under the ordinary law which he could exercise for the purpose of preventing the mischief. There are provisions in the Criminal Procedure Code which could be invoked for such purposes.... It is somewhat difficult to see why a different treatment was meted out to the petitioner and he was consigned to detention in jail for an indefinite period of time. There could be no better proof of malafides on the part of the executive authorities that a use of the extraordinary provisions contained in the Act, for purposes for which ordinary law is quite sufficient. ... there is want of good faith on the part of the authorities, the case is certainly not free from suspicion. I can only hope that the authorities will take care to see that no instances occur which might savour of injustice or oppression through misuse of those extraordinary powers which Parliament has vested in the executive in the interests of the State itself. 63

The judgement was delivered on May 19, 1950, which received hardly any attention from the Home Ministry till July, when the person in question was released. This is a clear instance of the flagrant violation of individual liberty. It also indicates the scant respect that the Ministry has for the judiciary, the custodian of civil liberties of citizens. In the case of Atma Ram, the Bombay High Court observed, in all the matters which have come before us

63. Supreme Court Journal (1950), 433.

we have been distressed to find how vague and unsatisfactory the grounds are which the detaining authority furnishes to the detenu. We are compelled to say that in almost every case we have felt that the grounds have been ampler and fuller without any detriment to public interest.⁶⁴

The position of the courts vis-a-vis the Preventive Detention Act is seriously handicapped by constitutional provisions contained in Article 22. Preventive Detention as such cannot be held ultra vires of the Constitution, as the Constitution itself provides for such detention. The only test required is satisfaction on the part of the District officials. During the operation of preventive detention law all fundamental rights stand suspended. Article 19 becomes practically a dead letter. In the case of Gopalan the question whether a detention order can be examined within the purview of Article 19 arose, and, it was held by the Supreme Court that Articles 19 and 22 are different and rejected the plea of the counsel for defense that Article 19(5) authorises to place reasonable restrictions and the courts are competent to decide whether the restriction was reasonable. Justice Mukerjee pointed out:

To me it seems that Article 19 of the Constitution gives a list of individual liberties and prescribes in the various clauses the restraints that may be placed upon them by law, so that they may not conflict with public welfare or general morality. On the other hand, Articles 20, 21 and 22 are primarily concerned with penal enactments or other laws under which personal safety or liberty of persons could be taken away in the interests of the society and they set down the limits within which the state control could be exercised. Article 19 uses the expression "freedom" and mentions the several forms and aspects of it which are sacred to individuals, together with the limitations that could be placed upon them in the general interests of the society. Articles 20, 21

64. Atma Ram v Commissioner of Police, AIR (1951), Bombay, 266.

and 22 on the other hand do not make use of the expression "freedom" and they lay down the restrictions that are to be placed on State control where an individual is sought to be deprived of his life or personal liberty.... 65

The right to make a representation to the Advisory Board in lieu of the right to legal assistance was adopted to make it sure that the allegations against the detainee might not be proved or established in a law court as is the case with ordinary prosecution. The sufficiency of the grounds to justify the detention of a person is left to the detaining authority and the court cannot be invoked. Article 22(5) provides that the detaining authority shall communicate to such detained person the grounds on which the order has been made. "If the detained person is not in a position to put before the court this paper, the Court will be prevented from considering whether requirements of Article 22(5) are complied with and that is a right which is guaranteed to every person".⁶⁶ The court is now, however, entitled to examine the reasonableness or otherwise of the Preventive Detention Act and to see whether it is within the permissible bounds specified in clause (5) of Article 19.⁶⁷

The Supreme Court, as its subsequent judgements have shown, relied largely on its decision in *Gopalan's* case. In *Gopalan's* case and later in *Ram Singh*, the Supreme Court treated Articles 19 and 22 as separate and failed to evolve the principle of harmonious construction*. A balanced decision regarding the scope of two

65. *Gopalan v State of Madras*, SCR (1950), p. 254.

66. *Kania (CJ)*, *Gopalan v State of Madras*, SCR (1950), p. 131.

67. See *Gopalan v State of Madras*, SCR (1950).

* Harmonious construction imply; "when there are in a statute two provisions which are in conflict with each other such that both of them can stand, they should if possible, be so interpreted that effect can be given to both and that a construction which renders either of them inoperative and useless should not be adopted except in the last resort". (*Justice Venkatarama, Bengal Immunity Co v State of Bihar*, AIR, 1955, SC.661, 736.)

articles should have been attempted. Commenting on this, A.S. Bedi aptly sums up:

In Gopalan the Supreme Court of India adopted an approach of characterising restraints on liberty as direct and indirect and consequently, legislation which does not directly restrict fundamental freedoms is not to be tested by the qualifications laid down in Article 19. In that way it seemed to treat that Preventive Detention is more fundamental than the seven fundamental rights guaranteed in Article 19. Here, it must be stated that the provision relating to Preventive Detention in part III of the Constitution itself as one of the "fundamental rights", certainly an anachronism in view of the democratic values otherwise enshrined in that part; and therefore no judicial strategy could as such ignore it. Nevertheless it is true that the court failed to develop some Indian formula of Due Process of Law for the purpose of reviewing Preventive Detention. 68

The judiciary is yet to realise the twin objective of protecting individual liberty and at the same time maintaining a balance between individual good and social good. An independent and impartial judiciary is the greatest safety against official encroachments. The mischievous provisions of Preventive Detention Act, however, left little scope for the judiciary to protect individual freedom during the operation of PD Law. But even then whenever the Judiciary got an opportunity as in the case of Gopalan and Ram Singh, to mention only two, it simply followed the decisions of the British Courts and the American Supreme Court and failed to evolve healthy guidelines in consonance with the Indian conditions.

Since 1950 the PD Law was in operation and every time the Home Minister came forward to extend the life of the Act, the problem of law and order was stated. The various communal riots speak high of it, where beastly crimes were committed in a set-

68. A.S. Bedi, Freedom of Expression and Security (Asia Publishing House, New Delhi, 1966), pp. 452-3.

pattern, well-planned, violating the right of life, liberty and property of countless thousands of citizens. Regionalism and linguism have its virus spread throughout the length and breadth of the country. Effective implementation of the various codes with constant vigilance by the Ministry would have definitely improved the situation without, however, bearing the odium of Preventive Detention. The fact that despite the best provisions in the Criminal Procedure Code (Sections 54, 107, 108, 110, 133 to 143, 144, 149) resort had to be taken to an undemocratic piece of legislation, reflects lack of administrative foresight on the part of the Home Ministry. What was worse, was that even with the help of the PD Law peaceful atmosphere could hardly be achieved in the country. A direct approach to the problem of law and order would not, however, have invited unwanted controversy over the role of the Ministry. The problem could have lessened considerably with the assistance of the intelligence and the police at the disposal of the Ministry. Not only that Law and Order situation could not be improved but individual liberty was constantly evaded. If one looks at the figures of the detainees since 1950, one finds the glaring dichotomy between the Central Government and the State Governments as far as the application of the law was concerned. The Act increased the high-handedness of the authorities at the level of the States and the Districts. Had the final authority of detention been vested in the Central Home Ministry, violations could, perhaps have been fewer, as is the case in Great Britain.

At the time of enactment of the Act in 1950 it was said that all was not well in Hyderabad, the refugee problem is hanging fire, the wounds inflicted by the tragic divide had yet to be healed,

the hectic tension between Hindus and Muslims remains unchanged, transfer of population from one side of the border to the other created problems adding bitterness to reaction, clouded with hopes and fears among people. It was, therefore, very rightly thought by the Home Minister to enact an extraordinary law to meet this extraordinary situation. This was made so in 1950 but the continuation of the Act for about two decades reveals the real motive of the Ministry to crush political Opposition especially the communists.

The continuation of the PD Act for about two decades failed to make the people happy and contented. It is by no means a constructive measure for the amelioration of the deteriorating position regarding law and order. The Ministry of Home Affairs can never bring about peace and tranquillity in the country by resorting to such laws, guided purely by political motives. Such laws are a deliberate and well-thought out attempt to deviate from the well-established canons of jurisprudence and natural justice. Commenting on the PD Act, Acharya Kripalani went to the extent of saying: "It is not the opposition, it is not the goondas, it is not even the communists, it is you (government) who are the greatest enemies of this infant democracy. If ever this democracy dies, you will be responsible for it. You may live for a day and be no more; but this will be the judgement of history to your everlasting shame." ⁶⁹ Unless the Home Ministry by its endeavours make people feel that it is alive to their problems with which the country is faced, the situation will remain unchanged. Streamlining the entire administration on effective lines by constant

69. Lok Sabha Debates, Vol. IX, No. 22, December 13, 1954.

vigilance over the disintegrating forces is the urgent call of the hour. The problem of law and order can never be solved with the help of preventive detention laws. A positive and dynamic approach is required. Political freedom of the citizens is important especially in an infant democracy like ours. It ought to be protected against the administrative onslaughts of the State, district and local authorities, for which the ultimate responsibility lies with the Ministry of Home Affairs. Constant and blatant violation of political freedom of individual by resort to such laws can never create an atmosphere congenial to democracy and Rule of Law.

Emergency Provisions

The Constitution provides ample provisions for dealing with emergencies. The President of India can declare an emergency under Articles 352 and 356 of the Constitution, obviously on the advice of the Home Minister. There are no strict rules to determine the validity of the proclamation of emergency, it is left to the subjective satisfaction of the President, which in practice means the satisfaction of the Home Minister. "The Proclamation can be made under the Constitution, as under the Act of 1935, only in case the security of India is threatened. But the language of the Constitution is an improvement on that of the Act on two points, firstly, the Constitution provides that the Proclamation may be made also where only a part of the territory of India is threatened. Secondly, the words, 'External aggression' have been added, with the result that under the Constitution, the power may be used by the President not only in case of war; but also in cases of external

aggression, short of war."⁷⁰ The courts shall have no power to question the validity of any Proclamation made by the President on the ground that it is not justified by the existence of any of the grounds mentioned by the Constitution as constituting 'grave emergency'.⁷¹ The President can make Proclamation on being satisfied⁷² "that there is imminent danger thereof".

The entire structure - political, administrative and constitutional takes a swift turn departing from the normal course. One of the immediate effects of the proclamation of emergency is the complete subordination of the legislative and executive power of the state governments to that of the Central Government. The delicate balance between the Centre and States stands disturbed during the period of emergency. Fundamental Rights guaranteed in Article 19 remain suspended and the executive can impose restrictions on the freedoms guaranteed in the said Article. Article 32 i.e. the right of citizens to move the courts for the enforcement of the rights also remains suspended.

The Defence of India Act was passed in 1962 despite the fact that the Constitution has provided for the emergency provisions. The need for the Defence of India Rules arose due to sudden and unwarranted Chinese aggression. The aggression was indeed a landmark in the history of independent India. The exigencies of Emergency demand quick action and suspension of the normal procedure based on Rule of Law, till normalcy is restored back.

70. D.D. Basu, Commentary on the Constitution of India (Sarkar, Calcutta, 1964), p. 169.

71. Ibid.

72. Constitution of India (1950), Article 352 (3).

As a result, the President of India obviously on the advice of the Home Minister declared emergency by an Ordinance on October 26, 1962 and this continued till 1967 and hence there was no need for a fresh proclamation, when the Pakistani troops crossed over the Indian border in 1965. Along with the emergency proclamation, the President of India issued the Defence of India Ordinance. Under the Ordinance Defence of India Rules were framed which were amended by another Ordinance and ultimately it was replaced by the Defence of India Act, 1962.

The Act was modelled largely on the Defence of India Act, 1939; but the 1962 Act conferred more powers on the executive than the Act of 1939 in many respects. For instance the Defence of India Act 1962 prohibited "the printing or publishing of any newspaper, newsheet, book or other document containing matters prejudicial to the Defence of India, civil defence, the public safety, the efficient conduct of military operations or the maintenance of supplies and services essential to the Community". As far as the duration of the two Acts are concerned ~~the Defence of India Act, 1939~~ was more liberal in providing that the said Act will remain in force during the continuation of war and for a period of six months thereafter (S.1(b)). The Defence of India Act 1962 on the other hand provided that the Act will remain in force during the operation of the proclamation of emergency and for a period of six months thereafter (S.1(3)).

Soon after the aggression, Parliament was summoned and a resolution declaring emergency throughout the country was passed unanimously. All the opposition parties extended their support to the Government in facing the aggression. Nehru could proudly say:

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 "even the blind can see that all people are one today". To meet the tasks thrown open by the invasion, the need for the enactment of the Defence of India Rules were felt and they were enacted with hardly any note of dissent. Despite the fact that the Act has conferred enormous powers on the executive, but the circumstances warranted the passing of such an Act. But what is pathetic is the enactment of Defence of India Act, 1963 replacing the Defence of India Ordinance enacted on December 12, 1962, after the vacation of Chinese troops reveal lack of trust on the part of the Home Ministry in its own citizens, who extended their unanimous support, shedding all their difference with the Ruling Party, at the time of the proclamation of emergency. The entire nation pledged to place all their efforts at the disposal of the government. Despite the unanimity, it must be remembered that the Preventive Detention Act was also in force at the time of emergency. Anyone on mere suspicion can be detained without trial. One reason could have been lack of experience on the part of the Home Ministry in handling the situation, resort have had to be taken to the Defence of India Rules. Added, the mere fact of aggression does not necessarily result in the enactment of extraordinary Rules when the Constitution itself has provided ample emergency provisions with a wide coverage dealing with all aspects of life of individual as well as community.

While moving the Defence of India Rules Bill, A.K. Sen, on behalf of the then Minister for Home Affairs told the Lok Sabha:

One of the most important thing that have to do
 in carrying into effect the resolve of the Nation
 is to assume all these powers necessary for the

73. Lok Sabha Debates, Vol. IX, No. 1, November 8, 1962.

Government in every sphere of our national life, not only to increase the armed might of the country but also to increase the industrial and other resources of the nation, to mobilise them, to harness them for this one supreme necessity, namely, the defeat of the Chinese soldiers and the Army. The purpose is, therefore, beyond dispute. 74

Clause 3(1) of the Act reads: "The central Government may, by notification in the Official Gazette, make such rules as appear to it necessary or expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations or for maintaining supplies and services essential to the life of the community." 75

A casual glance at these provisions reveals the vagueness of the grounds. Public order covers a comprehensive area where anyone can be detained without warrant. This item resembles to the preventive detention act, discussed earlier. In the following paragraphs an attempt has been made to examine the working of the Defence of India Rules under the direction of the Ministry of Home Affairs.

The Opposition, while extending their support, raised their apprehensions over the possible misuse of the provisions of the Defence of India Rules. Professor N.G. Ranga said: "I have to give my general consent to the framework of this legislation. And, I do so with a heavy heart. It is a great sacrifice that we are called upon to make and allow our civil liberties and all the fundamental rights that are enshrined in our Constitution and also all that goes to help our people to enjoy and to live as human beings." 76

74. Ibid., Vol. X, No. 11, November 21, 1962.

75. Defence of India Act 1962, Acts of Parliament, 1962
(Ministry of Law, Government of India, New Delhi), p. 259.

76. Lok Sabha Debates, Vol. X, No. 11, November 21, 1962.

He further observed;

... in the process of our efforts to achieve that objective of victory, we should be careful to see that the freedom and the fundamental rights of the people, their institutions, social, economic and political do not come to be smothered, and are able to stand on their own feet, to exercise their spirit of self-reliance and self-respect, and to continue not only to exist and live but also to come to effective citizens, so that once victory is won they would be able to function as full-fledged citizens with all the experience of this war in a manner which would assure this country not only the continuation of Parliamentary institutions but also the enjoyment of a fully representative government. 77

Individual freedom is not absolute so is democracy. They are to be judged in the context of the situation prevailing in the country. In 1962 when the Defence of India Act was passed, the country was in the threshold of aggression. So long as the safety of the state is not in danger individual freedom requires state protection as well as guidance, but when the security of the state itself is in doldrums, individual freedom has to be sacrificed, till conditions become normal. But continuous resort to emergency provisions even in normal times is certainly undesirable. Moreover even during emergency utmost care is to be taken to see that an innocent citizen is not punished. Continuous violation of individual freedom under the pretext of emergency to meet certain political ends is certainly undesirable and intolerable. As Lord Acton has observed, "amid the clash of arms the laws are not silent. They may be changed but they speak the same language in war and peace".⁷⁹

77. Ibid.

78. Liversidge v Sir John Anderson, A.C. (1942), p. 224.

The Ministry of Home Affairs failed to check the blatant violation of the Act especially by the District authorities. The Law Minister on behalf of the Home Minister assured the House that, "any officer or authority who would be using these powers for a collateral purpose would not only be open to disciplinary punishment but such action would also be open to review by courts because any action done for a collateral purpose, namely, for a purpose not of the defence of India but for some private reason or other reasons, if proved, would be open to court's interference. I have no doubt that the governments of the States and the Centre would also punish those who would misuse any authority with which he is empowered."⁷⁹ Similarly Datar, the then Minister of State in the Ministry of Home Affairs, assured the House: "consistent with the need of the country and the requirements of the emergency, government will utilise the powers at all levels as fairly as possible".⁸⁰ Unfortunately all these assurances seem to have lost in wilderness as shall be seen below.

Under the Act special tribunals were to be set up.

Regarding the Tribunals Sen declared in Parliament;

If there are any cases of manifest errors or manifest cases of injustice brought to the notice of the government, not only executive dispensation would be available but we would see them what other expeditious remedies we might devise for the purpose of correcting the errors. As it is we have taken the precaution of setting up of a Tribunal of three members not of one.... For speedy justice, speedy enforcement, for our national treasures, we set up these tribunals because it becomes absolutely necessary and ordinary courts become out of place ... if there are really cases where there are

79. Lok Sabha Debates, Vol. X, No. 14, November 26, 1962.

80. Ibid., Vol. X, No. 16, November 28, 1962.

manifest errors of law or exercise of jurisdiction I have no doubt that the Supreme Court will give leave for appeal. 81

But as far as these tribunals are concerned there are practically no safeguards for the citizen to defend himself, the usual procedure being denied. These tribunals may be constituted by one from the sessions judge to Additional District Magistrate who can sit in judgement and pass a death warrant. Sub clause 5 of Clause 15 of the Act reads; "After an accused person has once appeared before it, a Special Tribunal may try him in his absence if, in its opinion, his absence has been brought about by the accused himself for the purpose of impeding the course of justice, or if behaviour of the accused in court has been such as, in the opinion of the Special Tribunal, to impede the cause of justice".⁸² This is most horrid. Normal procedure of trial is completely set aside. The accused can be tried in his absence and be declared convict so as to throw him behind the gallows. The right to appeal to High Courts and Supreme Court were accorded only in certain cases. It ought to have been granted in all cases as that would have corrected errors on the part of the Tribunals, if any, in arriving at a decision. Clause 15(2) provides "Save in cases of trials of offences punishable with death or imprisonment for life, ... it shall not be necessary in any trial for a Special Tribunal to take down the evidence of length in writing".⁸³ This is certainly a harsh provision. In the absence of evidence fairplay could hardly be expected.

81. Ibid.

82. Defence of India Act, 1962, op. cit., p. 275.

83. Ibid.

The Defence of India Rules instead of employing for the reasons they were enacted, were used to crush political opposition. The example of Kerala highlights this point. "On December 30, 1964, the Governor of Kerala ordered the detention of 140 left communists including the petitioners. On March 4, 1965, the Central Government revoked the orders of the Governor of Kerala and issued fresh orders in the name of the President ordering the detention of all the 140 left communist leaders. The petitioners argued that the order of the Central Government was issued to damage the prospects of Communist Party in the mid-term election, scheduled to be held early in March 1965 and to circumvent the possibility of the release of the petitioners in the event of their party coming into power in Kerala. They, therefore, claimed that the order was malafide. The Court speaking through Mr. Justice Wanchoo accepted as final the denial of those charges in the affidavit filed by the Government of India.⁸⁴ But unfortunately for the annoyance of the Home Minister many of the detained leaders were elected in the elections. The election results turned the tables against the Home Ministry, which in order to prove its might dissolved the State Assembly before it was summoned. In the elections 40 Official candidates were returned to the State Legislature. Out of these 40 candidates 20 were among the 140 detenus. The Union Home Minister refused to release these detenus. One of the elected candidates unsuccessfully challenged validity of his detention on, among others, the ground of malafide.⁸⁵ The elected candidates were not released,

84. Mohd. Ghouse, "Abuse and Misuse of the Defence of India Rules", Indian Journal of Politics (Department of Political Science, Aligarh Muslim University, Aligarh), Vol. I, No. 1, January-June 1967, p. 132.

85. Ibid., pp. 132-3.

the Assembly was not allowed to meet and the Home Ministry made a complete mockery of democracy. The action coupled with political prejudice on the part of the Home Ministry defeated the purpose of even the so-called facilities given to the detenues for contesting the elections. The facilities included; "between 30-4-1965 the date of notification calling the General election and 6-2-1965, the last date for making nomination, the agent of each detenu had been allowed to see him once for obtaining his signature on the nomination form ... the election agent of the detenu has been permitted to interview him once a week till elections are over ... the detenues standing for elections have been permitted to hand over the orders of appointments of polling agents to the Jail Superintendent concerned who would forward them immediately to the persons concerned by post...."⁸⁶ These concessions after all made hardly any change in the election prospects. Election requires the wholetime attention of candidates contesting the elections. Occasional consultation with the election agent or mere filing the nomination are not enough. Despite the hardships the detenues were elected, which prompted the Home Ministry to invoke a fresh proclamation of Presidential Rule, to prevent the elected representatives of the people to form the government. It is obvious that the Home Ministry can detain any number of candidates before elections and if elected the Kerala episode may be conveniently repeated.

Not only this, in the Anandan Nambiar case the court held that Members of Parliament or State Legislature did not enjoy

86. Hathi, Minister of State in the Ministry of Home Affairs, Lok Sabha Debates, Vol. XXXIX, No. 11, March 3, 1965.

immunity for arrest under the Defence of India Rules.⁸⁷ This ruling of the court empowers the Home Ministry to detain any number of Members of Parliament, belonging to the Opposition groups in order to bring down their majority in the House. Similarly if a censure motion is introduced and there is likelihood of its success, DIR can be invoked and Members belonging to the Opposition groups can be put behind the bars. This is what actually happened in Kerala on the eve of No-confidence motion against the Shankar Ministry.

Nowhere in the annals of the constitutional history do we find an act like the Defence of India Act and the rules framed thereunder. Even during the Second World War in Great Britain, "the Home Secretary, Mr. Herbert Morrison's decision to release Sir Oswald Mosley, the socialist leader who was a supporter of Hitler during the war, a supporter of the enemy, was supported by Sir Winston Churchill.... He got up to justify the release during the war in 1944 by saying: 'the power of the Executive to cast a man into prison without formulating any charge known to the law and particularly to deny him judgements by his Peers, for an indefinite period, is in the highest degree odious, and is the foundation of all totalitarian governments, whether Nazi or Communist. It is only when extreme danger to the state, can be pleaded that this power may be temporarily assumed by the Executive. And when so, its working must be interpreted with the utmost vigilance by a free Parliament.'⁸⁸ Even during the worst period of emergency in India under the British Rule, access to law courts was not blocked.

87. Mohd. Ghouse, op. cit., p. 133.

88. M.R. Masani, Lok Sabha Debates, Vol. XXIV, No. 22, December 17, 1963.

The Defence of India Act authorises the Central as well as State Governments to detain any person without informing him the grounds of his detention. The Act empowers the officers of the rank of District Magistrates the right to detain persons. In the case of England, the power rests with the Home Secretary.

As a result of the enormous powers conferred on the executive by the DIR, substantial harm was done to citizens by continuously violating their rights. What is surprising is that even the High Courts have supported the Executive in matters of actions ultra vires of the Constitution. During Sardar Partap Singh Kairon's regime in Punjab there was a wild rumour that the courts, not excluding the High Court, were functioning under the thumb of the State Executive. The case of Dr. Pratap Singh v State of Punjab bears ample testimony to this. Nanda, the then Minister for Home Affairs, himself quoted the Supreme Court decision in the Lok Sabha. The Supreme Court held;

The dominant motive which induced the government to take action against the appellant was not to take disciplinary proceedings against him for misconduct which its bonafides believed he had committed, but to wreck vengeance on him i.e. the Chief Minister's wrath and for the discredit that he had brought on the Chief Minister by the allegations that he had made in the article which appeared in the Blitz in its issue dated Jan 15, 1961 followed by the communication to the same newspaper by the appellant's wife in which these allegations were affirmed and which in large part we have found to be there. We, therefore, hold that the impugned orders were vitiated by malafides, in that they were motivated by an improper purpose that for which the above power or discretion was conferred on Government and the said orders should therefore, be set aside. 89

89. Gulzarilal Nanda, Lok Sabha Debates, Vol. XX, No. 19, September 6, 1963. For details see Dr. Pratap Singh v State of Punjab.

Although the Supreme Court set aside the case as malafide the fact, however, remains that everybody cannot go to a court of law declaring a particular executive act to be malafide, as it involves lot of expenditure and too much of patience, owing to the tardy manner in which the judiciary functions in this country. The Home Ministry did practically nothing to verify even the cases where power was grossly misused and failed to award punishment to the delinquent officers.

What is even more pathetic about the Act is that first persons were arrested under the ordinary law and when the courts set them free after declaring them to be innocent, the Defence of India Rules were invoked and persons were arrested under Rule 30 (1)(b) of the Rules. "In the Ismail Bhai case the prosecution initiated against the petitioner by police did not culminate in his conviction. The petitioner was later detained under Rule 30 (1)(b)".⁹⁰ Another interesting case was that of Sahib Singh in which the "petitioner alleged that he had been prosecuted under Section 3 of the Official Secrets Act and that the court had discharged him on the ground that sufficient evidence could not be discovered against him. He alleged that when he came out of Jail after spending three months there as an under-trial prisoner, he was served with an order of detention".⁹¹ In case of Godavari v Paramlekar, "the detention order was passed during the pendency of the habeas corpus proceedings".⁹² These are some of the notable cases where power has been grossly abused, and

90. Mohd. Ghouse, op. cit., p. 133. For details see Ismail Bhai v Parthasarathy, AIR (1966) Guj. 62.

91. Ibid.

92. Ibid.

the Ministry of Home Affairs remained a silent spectator.

The detenu can not challenge the validity of the sufficiency of grounds of his detention in view of Rule 30 (10)(b) which provides for the rule of satisfaction. In case of Ram Manohar Lohia, the Supreme Court speaking through Justice Hidayatullah observed:

The subject of Preventive Detention has been discussed almost threadbare and one can hardly venture in any direction without coming face to face with rulings of courts. These cases are now a legion. It may be taken as settled that the satisfaction of the detaining authority can not be subjected to objective tests, that the courts are not to exercise appellate powers over such authorities and that an order proper on its face, passed by a competent authority in good faith is a complete answer to a petition such as this.... The order of detention is the authority for detention. That is all the detenu or the court can see. 93

subjective satisfaction is a ticklish and misleading provision, which can be exercised at the whim of the executive without any hitch or obstruction from the judicial side.

Another instance involving abuse of authority is the case of Ghasi Ram, in which "the detenu challenged the validity of the order of detention passed by the officiating District Magistrate, who was not the competent authority under Section 3(2) (15)(1) of the Act read with Rule 30(1)(b), the Counsel for the Government informed the court that the petitioner has been released. Consequently the court dismissed the petition. The fact, however, was that the government never released the petitioner and that simultaneously with the cancellation of an earlier order of detention, a new order of detention was passed and the latter fact suppressed from the court. Had that fact been brought to the Court's notice there would have

93. Ram Manohar Lohia v State of Bihar, AIR (1966), S.C. 740 at 755-6.

been no occasion for the dismissal of the writ application of the petitioner. The court, therefore, objected to suppression of that vital fact and held that from this it can legitimately be inferred that the order lacked bonafides⁹⁴. This was how the Defence of India Rules were applied.

The case of Makhan Singh offers another glaring instance of the abuse of power. The petitioner was detained along with others under Rule 30(1)(b), S.3(2)(15)(1) and S.40 of the Defence of India Rules, which empower the government to make rules for the detention of persons suspected to be of hostile origin or for the purpose of preventing them from acting in a manner prejudicial to the defence of India and S. 40 enables the Central Government to delegate its powers under the Act inter alia to any officer or authority subordinate to State Government. The petitioners challenged the validity of the detention order in the High Courts of Bombay and Punjab and contended that the order is ultra vires of Articles 14,⁹⁵ 21 and 22 of the Constitution and pleaded under Section 491(1)(b) of the Criminal Procedure Code. The petitions were dismissed by the High Courts on the ground that an order issued by the President under Article 359(1) of the Constitution prevented the petitioners from moving the law courts for the enforcement of the fundamental rights guaranteed in Articles 14, 21 and 22 of the Constitution. The petitioners then appealed to the Supreme Court. The Supreme

94. Mohd. Ghouse, "Judicial Control of Detention and Defence of India Rules", Aligarh Law Journal (Department of Law, Aligarh Muslim University, Aligarh), Vol. 3, 1967, p. 12.

95. "Any court may whenever it thinks fit that a person illegally or improperly detained in public or private custody within its jurisdiction be set at liberty". (Section 491(1)(b) of the Cr.P.C.).

Court held unanimously that Section 3(2)(15)(1) of the Defence of India Act contravenes Articles 14, 21 and 22 and detention orders made thereunder are, therefore, illegal. The Court observed;

Article 359 does not purport expressly to suspend the fundamental rights. The rights are not expressly suspended but the citizens are deprived of their rights to move the court for their enforcement.... It is quite obvious that if the Act has contravened the citizens fundamental rights under Articles 14, and 22 it would be void and the detentions affected under the relevant provisions of the said Act would be equally inoperative. 96

In the same case Justice Subba Rao observed;

I cannot for the moment attribute to the august body, the Parliament, the intention to make solemnly void laws. It may have made the present impugned Act bonafide thinking that it is sanctioned by the provisions of the Constitution. Whatever it may be, the result is, we have now a void law on the statute book and under the Act, the appellants before us have been detained illegally.... The tendency to ignore the rule of law is contagious, and, if our Parliament, which unwittingly made a void law, not only allows it to remain on the statute book but also permits it to be administered by the executive, the contagion may spread to the people, and the habit of lawlessness, like other habits, dies hard. Though it is not my province, I venture to suggest, if I may, that the Act be amended in conformity with our Constitution without losing its effectiveness. 97

He also observed;

These authorities well establish that § 491 of the code does not contemplate any right to move a Court by any affected Party, but the Court can exercise the statutory power whenever it thinks fit, if the fact of illegal detentions brought to its notice. 98

If one looks at the provisions of the Defence of India Rules one is but to notice its arbitrariness and utter indifference to the

96. Makhan Singh v State of Punjab, AIR (1964).

97. Makhan Singh v State of Punjab, AIR (1964), SC 381 at 407.

98. Ibid., 414.

cherished democratic values. Rule 41 of the DIR prevents prejudicial acts, publications and communications. Prejudicial activities are too vague for a vague report. A speech critical of government's policy, a manifesto pinpointing the bungling and the loopholes of administration may be included under the category of prejudicial activities. Rule 35(6) defines a prejudicial act as "bring into hatred or contempt or disaffection towards the government established by law in India" (clause f); "to promote feelings of enmity and hatred between different classes of persons in India" (clause g); "to cause fear or alarm to public or any section of public" (clause h); "to undermine public confidence in the national credit ..., or to prejudice the success of any financial measures taken or arrangements made by the government with a view to efficient conduct of military operations" (clause 2); "to encourage or incite any person or class of persons or public generally to refuse or defer payment of any land revenue, tax rates, cess or any other duties or amount payable under any law or custom having the force of law for any services rendered to the community or any rent, agricultural or anything recoverable in arrears along with such rent" (clause m); and finally "to create or produce or instigate or incite, directly or indirectly, the cessation or slowing down of work by a body of persons employed in any place of employment in which one hundred persons or more are actually employed, in furtherance of any strike which is prohibited under Rule 126 or is illegal under any law for the time being in force" (clause n). The Act covers a large area for which there are already provisions in the Criminal Procedure Code and the Indian Penal Code. For the emergency period those provisions might have been a

necessity but they should have been struck down immediately after the emergency, with the same zeal as was found with the Home Minister at the time of its enactment.

"The case in which the power of detention was grossly abused and which tested judicial temper and wore judicial patience thin was the Kerosene Dealer case. The facts of the case are as follows: One N.P. Nayyar, DSP (Civil Supplies), got two criminal cases instituted against the petitioner, a wholesale dealer in kerosene oil for alleged violation of Rule 125 of the DIR read with kerosene (Price Control Order) 1963. On his release on bail by the District Magistrate, the DSP forcibly removed him from his house and again threw him in jail. The object of the DSP was elimination of the petitioner from the wholesale business in kerosene oil in Trivandrum so that the relations of the DSP who filed the FIR in the second criminal case, instituted against the petitioner and who were the rivals of the petitioner in business, might obtain the agency for the wholesale business in kerosene oil. The petitioner contended that his detention was wholly unnecessary as, in view of the kerosene (Price Control) Order 1963, he could not carry on his business without a license. The Home Secretary tried to refute that plea by arguing that there was nothing in law which prevented from applying for a license. The DSP did not bother to file an affidavit to deny the charges of malafide levelled against him. The court noted that this infirmity was heightened by the fact that the Home Secretary took to deny the allegations made against the DSP. When it was plain that his evidence was based on hearsy evidence, the court held that the power conferred on appropriate authority had been abused and observed that "continuous exercise of the very wide

powers conferred by the rules on several authorities is likely to make the conscience of the said authorities insensitive, if not blunt, to the paramount requirements of the Constitution and may pose a serious threat to the basic values on which democratic way of life is found.... The resounding strictures passed by this Court in this case sparked off a stormy protest from all sections of the society. The prominent citizens including three retired Chief Justices of India and some Members of Parliament, appealed to the President for withdrawing emergency. Mr. Nanda, the then Home Minister, rejected all these pleas and protests, but offered a sop to his critics by declaring that the power conferred by the DIR, would be used only by the Centre and the border states. He also observed that under Article 352 emergency could not be confined to border areas.⁹⁹ But all these platitudinous statements went unheeded. And the Home Ministry treated these matters in the most casual and cavalier manner.

The Act, with its unfettered provisions was mainly utilised for political purposes. The Communists were the first victims. During the Chinese aggression many communists were detained, as the Home Ministers themselves have stated time and again, to avert lawlessness and subversion in the country. But unfortunately it could not materialise its aspirations. The argument that the Act was required to meet the communist subversive activities is but a lame excuse which does not stand scrutiny. In case of *Kasinath v State of Madras*, the Madras High Court observed:

99. Mohd. Ghouse, "Abuse and Misuse of DIR", Indian Journal of Politics (Department of Political Science, Aligarh Muslim University, Aligarh), Vol. I, No. 1, January-June 1967, pp. 134-5.

If we suppose the activities of the members of a particular group were prejudicial to the safety of India, we do not think for a moment that the detention of members of that group.... But when detaining such individuals the consideration ought to be subjective satisfaction that such an individual as a member of the group had also indulged in objectionable activities or was likely to do so. To detain him for the membership of that group and without consideration of his participation in these affidavits would certainly be illegal. 100

Besides the discourses of the Supreme Court and the High Courts on the arbitrariness of the Act and the indifferent manner in which the Ministry of Home Affairs was working in regard to the DIR, many irregularities were also noticed from time to time while making the detention orders. To cite one instance in the case of *Jagnath Misra v State of Orissa*, "the Court set aside the detention order of the petitioner on the ground that while the detention order specified six grounds of detention, the Minister in speaking of his satisfaction mentioned only two".¹⁰¹

Not only individual liberty was violated by invoking the DIR but freedom of press was also put at serious handicaps. The arrest of T.J.S. George, editor of the Searchlight is a shining example. His fault was that he "in his editorials pleaded vehemently against violence. He criticised the leftist opposition parties for their failure to take precautions against the agitation being exploited by these hooligan elements. Official ire was roused not by the appeals to sanity on the part of both the Opposition and the administration,

100. AIR (1967) Madras 21 at 29.

101. Mohd. Ghouse, "Judicial Control of Detention under the Defence of India Rules", Aligarh Law Journal (Department of Law, Aligarh Muslim University, Aligarh), Vol. 3, 1967, p. 8. For details see AIR (1966), S.C. 1140. Also see *Biren Dutta v. Chief Commissioner of Tripura*, AIR (1965), S.C. 596.

but by the reports published in the news columns, which contained factual accounts of both the uncontrolled rowdyism of unruly crowds and the deliberate provocations offered by the Police¹⁰². Commenting on the above case the Mainstream in its editorial ably sums up:

The application of the Defence of India Rules to Shri George was clearly not due to the publication of facts relating to Patna Bundh and the numerous incidents connected therewith. There is no escape from the suspicion that Searchlight's criticism of the Sahay Government for its failure to control prices and make foodgrains available to the people was the real reason for the action taken against its Editor. This is a glaring case of the misuse of the sweeping powers vested in the Government in the name of national emergency. While the organs of the communal parties are left free to spread disaffection and disrupt the nation, action is taken against the secular elements who only seek to convey to the authorities the extent of popular discontent over the prevalence of the impossible conditions of living. 103

The sermons of the courts and repeated pleas of the detainees that the DIR was being used for political purposes and for reasons other than those mentioned in the Act left them high and dry. Despite the continuous violation of fundamental rights, neither was an enquiry held nor a judicial commission set up to investigate the official high-handedness especially by the State and District Officers who found in the DIR a clue to settle their past accounts.¹⁰⁴ On the contrary the Home Minister sought the help of the Chief Ministers at the Chief Ministers' Conferences to rubber stamp the decisions taken by the Central Home Ministry to detain particular citizens.

102. "Ominous Signs", Mainstream (Editorial), Vol. III, No. 51, August 21, 1965.

103. Ibid.

104. Example the Kerosene Dealer's case.

Suggestions and Conclusion

Every revolution results in the expansion of rights and every war results in the curtailment of civil liberty. The repercussions of two world wars made nations to think of incorporating in their constitutions emergency provisions to deal with unforeseen contingencies. The tragedy with emergency provisions is that they develop a very bad tendency to continue even after the real emergency is over. This is exactly what happened in India after the proclamation of emergency in 1962. Emergency of war became emergency of peace and the Defence of India Rules were continued. Before proclaiming emergency the gravity of emergency is to be properly assessed; the emergency must be really grave. And its duration shall be reasonably fixed, depending, of course, on the facts and circumstances. The temptation to prolong emergency can be avoided by administrative alertness and political sagacity on the part of the Ministry of Home Affairs.

The emergency provisions shall be thoroughly scrutinised and suitably amended. Article 352 authorises the President to proclaim an emergency even before the actual occurrence of war, which can be, if desired, abused by the executive and the whole lot of fundamental rights may be set aside by one stroke of the Proclamation. The emergency declared under Article 352 will extend to the whole of India. There is no provision under the said Article for the confinement of emergency to a part of India where the danger is imminent or needs early measures for safety. Article 352 does not specify the time limit of the operation of emergency. The British Government never relied Indians but even then utmost care was taken to see that individual liberty was not

sacrificed, but as traditions die hard, the framers of the Constitution of Independent India too did not repose confidence in the citizens and hardly any safeguards were provided to prevent misuse of authority by the executive during emergencies. Similarly Article 358 is a blot on the Constitution. During its operation all rights guaranteed under Article 19 stand suspended. Paradoxically, during the operation of Article 358 the right to property guaranteed under Article 19(1)(f) remains suspended but the same right under Article 31 remains in tact. In the case of *Makhan Singh v State of Punjab*, the Supreme Court speaking through Justice Gajendragadhkar observed: "How long the Proclamation of Emergency should continue and what restrictions should be imposed on the fundamental rights of citizens during the pendency of emergency, are matters which must inevitably be left to the executive."¹⁰⁵

The Supreme Court should be given the power to review the detention orders to ensure justice and fairplay. Parliament can also be empowered to review the proclamation of emergency by the President from time to time, and in this context necessary amendments be brought in Article 362(2) in order to meet the requirements. Article 358 shall be deleted from the Constitution. Much of its validity has disappeared by the sixteenth amendment to the Constitution which authorises the State to impose reasonable restrictions on the first three freedoms enshrined in Article 19. Article 359 which authorises the President i.e. the Home Ministry in practice to suspend Article 32, the right to move any law court for the enforcement of any or all the fundamental rights, should be

105. AIR (1964), S.C. 381 at 403.

suitably amended or deleted altogether. The Fundamental Rights, in fact, are neither fundamental nor rights. Every article is pregnant with restrictions and counter-restrictions and the Home Ministry is more concerned with the enforcement of restrictions rather than of rights.

From the beginning the attitude of our leaders towards judiciary is uncompromising. Even Nehru, the apostle of individual freedom, uttered loose statements concerning the role of judiciary, which is not in any way congenial to the healthy growth of Rule of Law. During the discussion on the subject of compensation for compulsory acquisition of property in the Constituent Assembly, Nehru said: "No Supreme Court or judiciary can stand in judgement over the sovereign will of Parliament representing the will of the entire community. If we go wrong here and there it can point it out, but in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way. Ultimately the whole constitution is a creature of Parliament."¹⁰⁶ In the same vein, Dr. Ambedkar, while introducing the Draft Constitution said: "What the Draft Constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of police power, it permits the State directly to impose limitations upon the fundamental rights."¹⁰⁷ This might have been true in the then prevailing circumstances when the problem of property caused havoc in the country as a result of the unfortunate division of the

106. Constituent Assembly Debates, Vol. 9, September 10, 1949.

107. Ibid., Vol. VII, November 4, 1948.

sub-continent. But Nehru's statements were cited ad nasuam to justify acts like the Preventive Detention Act and the like. In India the need for proper judicial review is greater. It does not imply that the judiciary should encroach on the Executive. It only means the citizens should be provided judicial relief from the arbitrary actions. It is really pathetic that the Law Commission had to observe (1960):

Communal and regional considerations and executive influence had operated to keep the best High Court talent from finding its way into the Supreme Court. It alleged that the letter of the Constitution had been observed in consulting of Chief Justices on the appointment of High Court judges, its spirit had been neglected because Chief Justices had given in to the wishes of the Chief Ministers. 108

It is high time that the Home Ministry take substantial measures to strengthen the judiciary so as to enthuse people's confidence in the judiciary that it is an impartial body fostering Rule of Law. Necessary changes are also desirable regarding appointment of High Court judges. Appointments should be left to the Chief Justices of Supreme Court and the High Courts than allowing the Chief Minister to have his say in their appointments. Care should also be taken to see that the judiciary is not handicapped by making extraordinary legislations. "Laws are a dead letter", as Hamilton has observed very rightly, "without courts to expand and define their meaning and operation".¹⁰⁹

In a democracy it is necessary to have certain safeguards against executive encroachments on the rights of the citizens. The

108. Quoted Morris Jones, The Government and Politics of India (Aitchinson, London, 1967), p. 202.

109. Quoted M.V. Pylee, Federal Court of India (Manaktalas, Bombay, 1966), p. 12.

fact, however, remains that whatsoever safeguards are provided in the Constitution or by statutes, they will be defeated in the absence of an effective and enlightened public opinion. Courts and litigation at best can provide secondary help to citizens but the primary responsibility exercising their rights and fulfilling their obligations rest upon the citizens. A free press is a basic prerequisite for forming effective public opinion. If newspapers and journals are reduced to government bulletins or mouthpieces of big business and monopoly interests, public opinion can never develop the way it ought to be. Judging from the situation prevailing at the moment, it ought to be pointed out that the treatment that is being meted out to some of the newspapers especially by State Governments is highly deplorable. For instance, the recent decision of the UP Government not to give advertisement to the Times of India, speaks of the shallowness of government's attitude towards the press. The success of Parliamentary government based on Rule of Law in England is not due to age-old traditions and customs nor due to a mere accident of history but due to vigilant and effective public opinion. Lack of articulate public opinion in India has added to the high-handedness of the executive and lack of stable Opposition made the confusion worse-confounded. It is hoped that the Central Home Ministry will take up the matter in all earnestness by finding out suitable remedies. The Press Council shall be taken into confidence before initiating action against any paper or magazine. A constant liaison between the Press Council of India and the Ministry of Home Affairs may improve matters.

The challenges with which the present day India is faced with are manifold, which require a thorough investigation. The frequent protests against the police excesses, protection of freedom of expression and association, liberation of justice from government control and pressures, eradication of exploitation and corruption from public services. The paraphernalia of the Ministry should be actively engaged in to check this virus. The Defence of India Rules, after appropriating individual freedom to the extent that the Executive can, was done away with in 1967, but it had left its scars permanently which reminds us of the 19th century totalitarianism. The latest decision of the Ministry not to sponsor legislation to extend the PD Act which was to expire on December 31, 1967, is of course a healthy sign; but curiously enough the States are free to extend its life, if they so desire. It is bound to increase the powers of the State executives, which demands a constant vigilance by the Home Ministry. Preventive Detention is smokescreen for the further expansion of the powers of government and the curtailment of individual liberty, which the Constitution has explicitly provided under Part III. The Act was so much resisted by the Opposition parties that it led the entire Opposition with the exception of the Swatantra Party on the one hand and the Ruling Party on the other. That in itself is an evidence of the draconian provisions of the Act. The false presumption on the part of the Home Ministry that law and order is not possible without the PD Act is to be shed away. Even the British Government failed to curb the rising of the freedom movement against oppression and exploitation, under the benevolent care of the Government, with the help of extraordinary laws. A well-knit programme with a view to foster

public welfare, effective implementation of the economic policies, opening of new avenues of employment, need the immediate attention of the Government. The Ministry of Home Affairs being one of the key ministries of the Government, having its network spread over each and every aspect of national life, should reach the root of the disease and come forward with suitable remedies.

The role of Ministry is assuming greater significance day by day, in view of the intricate problems hanging fire in the country. The fear of balkanisation is haunting the nation; even the relative unity of India has degenerated into pronounced separatism, although strong feelings of national solidarity have been exhibited by the nation, number of times. The National Integration Council and its recommendations are a lid put on a boiling kettle. The purpose is to put off the fire but the tragedy is that the fire had reached the interiors of the country and mere ding-dong statements and ad hoc settlements are not enough. These problems make the Ministry sit on the horns of a dilemma i.e. to protect the nation from degeneration and to protect the citizens from bureaucratic excesses. Such delicacy requires a mixture of reconciliation and strength without endangering democracy. The Ministry has failed to make proper assessment of the situation. Thorough screening of the entire situation through a High-power Committee may, perhaps, lessen the amount of confusion. Instead of talking ad nauseum of lawlessness pernicious activities, etc. necessary action be taken to nip the mischief in the bud, without necessarily making advertisement, through statements, press conferences, All-India Radio and the like. This can be done if the intelligence services are properly utilised and on their findings, the culprits may be

tried in a law court, within the constitutional ambit, and without provoking any ill-will among citizens. Impartial administration of the penal laws, is the best guarantee against frequent outburst of violence and disorder and at the same time individual freedom will remain unsacrificed. Personal animus, communal considerations, political partisanship, regional bias, linguistic prejudices etc. should not motivate the operation of these anti-democratic devices. Constant vigilance, and not wilful victimisation, is the permanent bulwark of democracy. The Home Ministry along with its subsidiary agencies seem to lie in a perpetual slumber, awakened in spurts as and when the damage is already done. Hectic or sporadic activity after the incident is no cure. Fissiparious tendencies or subversive activities can be kept in effective check by more timely executive action rather than keeping the whole nation and every individual in a state of terror of the overhanging sword of Democles in the shape of PD Acts or DIR. The frequent operation of these devices is a sad commentary on the working of the Home Ministry.

CONCLUSION

Organisation occupies a significant place in the field of administration owing to division of labour, specialisation of functions and the use of modern scientific and technological discoveries, which have changed the tone and tenor of administration. Organisation is the systematic arrangement of personnel for the fulfilment of functions through a well-knit plan defining responsibilities and functions of the personnel engaged in. A good organisation postulates clear jurisdiction and responsibility, proper span of control, effective co-ordination and propensity for expansion. Proper organisation is therefore necessary for running the wheels of administration smoothly and harmoniously without friction or breakdown. It ought to be remembered that there is no hard and fast theory governing the principles of organisation. The shape of organisation changes, very often, with a change in the circumstances. Occasional organisational surveys and analysis, therefore, becomes necessary to keep the administration alive to the dynamics of social developments. The way organisation and reorganisation of ministries took place in India is depressing. The creation and abolition of ministries was done in a haphazard manner more on political or whimsical rather than on rational and administrative grounds. Organisational changes and adjustments are necessary in so far as they help to meet the growing demands and the problems bedevilling the administration, but if they are affected for reasons other than administrative convenience, the problem gets complicated. A random look at the reorganisation of ministries and departments will reveal this. The Ministries of

Food and Agriculture, for example, was amalgamated in one Ministry of Food and Agriculture to be separated in October 1956 and again to be amalgamated in April 1957. The Department of Company Law has been similarly shuttling to and fro before it was finally absorbed in the Department of Law. The Government should not be too squeamish so as to make a fetish of departmentalisation. It ought to be based on scientific and rational analysis of the subjects to be dealt with.

Secretariat Versus Head of the Department

The Secretary, being the chief adviser of the Minister on matters pertaining policy formulation, needs to be equipped with an office to assist him in the fulfilment of his responsibilities. Such an office is known as the Secretariat. The secretary occupied a pivotal position during the British regime. After independence the popularly elected Ministers were vested with the real governing authority and not the Secretary. In this changed context secretariat has come to mean the Minister's office. The executive machinery of the Government is presided over by the Head of the Department. Implementation of the policies and programmes approved by the Minister is the responsibility of the Head of the Department. They also render technical advice to the Secretariat on matters pertaining to their sphere. It is, therefore, desirable that harmony should prevail between the Secretariat and the Head of the Department. But unfortunately the excessive interference of the Secretariat has considerably devalued the Head of the Departments. As a result 'the Head of the Department is deprived of all initiative, and instead of being allowed to attend to and make progress with his own work, has to spend a great deal of time submitting unnecessary

reports, explaining the position in individual matters to the Ministry and getting its order on points which lie well within his own sphere of authority. The attempt by a Ministry to do the work of the head of a department invariably ends in inefficiency and failure.¹ This rot has to be stemmed so as to allow the Ministries and Secretariat departments to deal with matters of policy and the executive tasks be left to departments and authorities specifically designated for the purpose.

Minister Versus the Civil Servant

It is maintained that Indian bureaucracy is slow, file-bound and rule-ridden. Many reports from that of Gopalaswamy Ayyanger to those of the Administrative Reforms Commission have looked into the problem and suggested reforms for streamlining the administration. Many of the such reforms have been implemented but the basic defects inhibiting the administration still persist, making it diffident and shaky. The Minister's inability to protect the public servants against public criticism and the allegations, real or imaginary, frequently bandied about inside as well outside the Parliament has seriously affected the position of the civil servants vis-a-vis the Ministers. Cordial relation between civil servants and Ministers is long recognised as a cardinal principle ensuring better administration in a Parliamentary democracy. And towards that effect many suggestions have been made in the light of past experience (LIC Scandal). The Ganthanam Committee and the Administrative Reforms Commission have also highlighted this problem. But unfortunately these recommendations could not bring about any appreciable change.

1. A.D. Gorwala, Report on Public Administration (Planning Commission, New Delhi), p. 40.

It would be quite in the fitness of things, as suggested by the ARC,² to set up an all Party Parliamentary Committee of both Houses whose functions will be to see that the recommendations accepted by the Government are implemented expeditiously.

Structural Changes

With the rapid expansion of bureaucracy, necessary structural changes need to be undertaken. The number of secretaries (in some Ministries there are more than one co-equal secretaries, joint-secretaries, additional secretaries etc.) have shot up, which has thrown open the problems of co-ordination. The maxim that a Minister should have a single secretary of experience and status to aid and advise has now been wholly disregarded. It is rather unfortunate that senior officials who were expected to advise against the fragmentation of Ministries with inter related functions are now engaged in the game of reconstituting them, and later organising them in departments mainly to provide avenues for promotion to their confreres on considerations of seniority.³ The principle of entrusting to one officer to aid and advise the Minister was also recognised by the Maxwell Committee as far back as 1937.⁴ It would be much more preferable if one officer is entrusted with the task of supervision and co-ordination of the departmental activities rather than asking him to perform the

2. Report of the Administrative Reforms Commission on the Machinery of the Government of India And Its Procedures of Work, para 16(5).

3. Asok Chanda, OP&T, pp. 148-49.

4. For details see: Report of the Maxwell Committee, 1937.

departmental work. That would result in better co-ordination of the departmental work which is awfully lacking at the moment. The day to day departmental work can as well be assigned to the joint and additional secretaries who should work under the overall supervision of the Secretary. The Secretary should make it a point not to interfere in the day to day affairs of the department. Too much of interference will mar the efficiency of the subordinate staff. Nor should the secretary sit in the ivory tower, keeping himself aloof from the activities of his subordinates. A happy blending between the two is perhaps the most suitable wedlock. Such an arrangement will also increase the morale of the subordinate staff. - But unfortunately morale specially at the middle and the lower levels of the services was undermined by favouritism in services (in which caste politics often played a part), and by the continued erosion of inadequate salaries by inflation.⁵ Sound promotion policies will breed a sense of confidence in the employees which is bound to add to their efficiency. It would ensure better 'span of control' and more 'efficient unity of command'.

Administrative Procedures

An entirely new approach to the administrative procedures and the introduction at all levels of some responsibility of bureaucracy is necessary. Procedures are necessary to give effect to the policies; and while laying down the policies the procedural implications and handicaps should also be taken into consideration. Good policies are very often defeated if implemented through wrong

5. A.H. Hanson, The Process of Planning: A Study of Indian Five Year Plans, 1950-64 (London, 1966), p. 289.

procedures. Administrative efficiency depends upon the way policies and procedures are adjusted. It involves the job of fact-finding, planning, research and a thorough codification of the existing procedures, devising new techniques of procedures and supplementing them with the old ones and finally standardisation of procedures. Complaints of administrative indifference and avoidable delays are an everyday phenomenon in India. The bureaucracy is largely criticised as being out of tune with the masses. The gap between bureaucratic inefficiency and governmental inaction be effectively bridged and be resolved by a precise translation of policies into administrative decisions based on concrete programmes. All complaints, whether official or unofficial, accusing the bureaucracy of inordinate delays due to faulty procedures or inefficiency, indifference or indolence of officers at all levels should be thoroughly scrutinised and remedies found out and implemented. Ignoring the complaints is a self perpetuating disease which eats into the vitals of administration in general and makes the whole administrative process sluggish and wasteful. It also results in political unrest and civil disturbance which, it is the duty of Home Ministry to minimise through its various agencies. It shakes the confidence of the people in the socio-political set up under which he is governed.

Disciplinary Action

A bitter controversy has gathered momentum between the Central Vigilance Commission and the Central Government over the nature of disciplinary action against Government servants. A similar disagreement between the CBI and the CVC is on the mat.

The CBI in some cases recommended regular departmental action but the Commission after examining additional information advised that no action is necessary.⁶ Mutual consultations is supposed to be one of the remedies to avoid such disagreements in future. What is even worse is that the Home Ministry has very often displayed muddled thinking and inaction towards the proposals of the CVC. In the case of an officer belonging to the Gujrat Cadre the CVC had recommended that penalties such as compulsory retirement, removal from service or dismissal were not called for. But the Home Ministry did not accept the advice of the Commission and issued notice to the accused to show cause why he should not be dismissed from the service. But in consultation with the UPSC, the salary of the officer was reduced from Rs. 2,875 to Rs. 2,500 per month. Similarly in past when the CBI brought before the Parliament the case of K.D. Malaviya and Serajuddin, the Home Ministry took a political decision and the findings of the CBI were treated with scant respect. The very purpose of these bodies will be defeated if their findings go unheeded by the Ministry of Home Affairs. A provision making it obligatory for the Home Ministry to explain to the Parliament the reasons for its disagreement, will go a long way in establishing the individuality of these bodies. Disciplinary action is one of the essentials of good and efficient administration. A scientific analysis of the methods of working shows utter lack of positive and effective methods of taking justifiable disciplinary action as and when it is needed, with the result that the services remain complacent

6. The Hindustan Times (New Delhi), June 3, 1971.

about or insensitive to the multiplying gaps in the administrative processes.

Conflicts of Jurisdiction

A common ailment of an expanding administrative machinery is lack of coordination leading to conflicts of jurisdiction and duplication of work resulting in administrative stalemate. The need here is for standardisation of procedures, delegation of authority at various levels of administrative hierarchy, proper communications-upward, downward and sideways, effective reporting, frequent consultation and conferences among officials belonging to different cadres and above all, dynamic leadership to keep the administration in tact. Mediocre or wheeler-dealer leadership will hamper administrative efficiency and bring about disintegration. Effective co-ordination is the safest guarantee for resuming order certainty, stability and control in an organisation.

To avoid duplication of work and conflicts of jurisdiction the functions of the Ministry is to be reconsidered in relation to other Ministries/Departments of the Government. For instance, "the political and administrative problems of Nagaland even after it became a full fledged state in December 1963, continued to be handled by the Ministry of External Affairs. The appropriate organisation for this subject obviously is the Ministry of Home Affairs. The latter arrangement should not come in the way of the Prime Minister by virtue of his position, handling certain sensitive issues in this area.⁷ Similarly an enlarged Ministry of

7. Report of the Administrative Reforms Commission on the Machinery of the Government of India and its procedures, para 196.

Law and Justice entrusting to it the over-all judicial administration be constituted. The Home Ministry's functions are essentially concerned with the maintenance of law and order. The Administrative Reforms Commission also realised this anomaly and has suggested the transfer of judicial responsibilities from the Home Ministry to the Ministry of Law.⁸ Such an arrangement will also reduce the work load of the Home Ministry and the comparatively under-employed Ministry of Law could well carry on with the judicial responsibilities with rationalisation. Delays have become the normal feature with the administration of justice. For instance the Calcutta High Court had 72,396 cases awaiting disposal on January 1, 1970. Allahabad with 63,276 pending cases ran a second round.⁹ It would also be in the interest of speedier justice if the Supreme Court be given the powers of superintendence over the High Courts, as suggested by Govinda Narain, the Secretary in the Ministry of Home Affairs. A provision for the appointment of Special Judges on an ad hoc basis to dispose of old cases¹⁰ would go a long way in easing the situation.

Corruption

Reports of widespread corruption in political circles and public services are not uncommon. This is largely owing to the typical nature of Indian bureaucracy i.e. a politically-ridden administration. As has been rightly observed by A.H. Hanson

8. Ibid., para 18B(XVIII).

9. The Hindustan Times, March 29, 1970.

10. Ibid.

"Indian bureaucracy itself constitutes a politically influential segment of society, with certain habits and expectations, which it is reluctant to see disturbed. From its point of view, radical reform would at least involve the learning of new tricks by old dogs and might conceivably mean the wholesale dismissal of a mass of superfluous personnel which could not find alternative employment. For these reasons, there is strong vested interest in retaining the familiar and employment creating complexities of the system. Secondly few politicians are interested in administrative reform as such and are dependent on the bureaucrats themselves for such advice on the subject, they receive. Thirdly, the attitude of the politicians are in many cases positively unhelpful. Politicians are no less interested than the bureaucrats themselves in making work, they persistently interfere for self-interested reasons, with administrative processes which should be insulated from their direct influences; they seldom realise that their power over the administration is one to be used with tact and direction, they resent advice from the administrator which cuts across their prejudices and predilection; and they are a major source of the prevalent corruption.¹¹ The problem of corruption has to be properly attended to with a view to eradicate it from all quarters of administration. At present there is no well-knit procedure or comprehensive agency to root out corruption and cases of favouritism nepotism, illegal gratification, defalcation embezzlement, misappropriation and reckless expenditure are far too many to be mentioned in this limited space. Lax leadership at the top has

11. A.H. Hanson, op. cit., pp. 290-1.

further complicated matters. An independent body, resembling the Ombudsman in other countries, is to be constituted to investigate into such cases and to bring to light the guilty ones. An ad hoc arrangement may be made till the offices of Lokpal and the Lokyuktas are constituted. As the subject of public services has now been transferred to the Department of Personnel, the responsibility of solving the multi-dimensional problem of corruption should rest with the department. And the Ministry of Home Affairs can play the role of a co-ordinating agency in regard to corruption on an all-Indian plane. The responsibility of the Ministry is not only to lay down sound policies but to ensure a follow up process so as to create conditions in which policies can be rigorously and purposefully implemented. Oft-repeated complaints of abuse of power by officials and non-officials encourage scandal-mongering and amounts to continuous mud-flinging letting loose a series of incriminations 'full of sound and fury signifying nothing'. The Home Ministry should clinche the issue as and when it comes to its notice instead of allowing it to drift along the traditional course where it is ultimately a victim of inaction and procrastination.

Centre-State Relations

A judicious balance between the jurisdiction of Centre and the States has not been realised so far. New dimensions were added to the Centre-State relations by 'centralised planning' in a decentralised democracy. The Congress split and the multiplicity of political parties and the transitory coalitions have introduced new tone and tenor in Indian politics, characterised by issues of succession, internal squabbles and numbo-jumbo masquerading of

defectors. The regional menace, the lingual and the communal threats have further made the Ministry lose the grip of political reality. The issues to be tackled in the near future are more political than ideological. Instead of never-ending rhetoric between the ruling party and the opposition, a consensus on policy perspectives has to be evolved. Economic planning and the various schemes of technological advancement have led to increasing demands from the bottom upwards. The changing political complexion in states, the mounting sense of state autonomy, greater financial powers and the like have made it difficult for the Centre to continue with too much of centralisation. The Home Ministry ought to reconsider the entire federal set-up in the context of the prevailing situation, further accentuated by increasing regionalism, intensifying linguism, economic centralism, and the prestige and privilege conscious local leadership trying to wrest power from the centre.

The Role of the Governor

The role of Governors also require proper re-definition. Reports of partisan behaviour on the part of Governors are not uncommon. The recent example of Bihar where, one fine morning, Mr. Nityanand Kanungo found the situation unstable to propose extension of Presidential rule and the New Congress leader Daroga Rai was found to have an adequate majority to form a government. Similarly in past, the manner in which things were handled in Kerala, West Bengal, U.P. and other places (as discussed in Chapter IV) create the impression that these Governors who were intended by the Constitution to be judicious umpires and 'balancing wheels' have degenerated into the agents of the Home Ministry whose guiding principle is vacillating opportunism. The methods adopted

were obsessively concerned with petty and short term gains which have hardly anything to do by way of ensuring good governments promising political viability. The Home Ministry has to provide the lead to stop this perverse interlude of opportunist tactics to build its strength and return the country to an orderly government, in consonance with the rules of the game of Parliamentary democracy. A reputation for constitutional propriety is essential for the Governors. Smooth relations between the Centre and the States are based on Governor's impartiality especially in periods of political upheavals in the States. This is in fact the justification for the continuation of gubernatorial posts along with its powers and privileges. The Home Ministry's proposal to evolve guidelines for Governors seems to be impracticable. It would be much more expedient to deal with each situation separately rather than to evolve a code, which in fact, creates even more anomalies, depending on the interpretation of these guidelines. ~~This problem of~~ formulating guidelines or a code of conduct for the Governors has been hanging fire since the very passage of the Constitution. Realising the deficiencies of such a code, the Constituent Assembly very rightly rejected the proposal at the very outset.

Law and Order

The primary function of the Home Ministry is the maintenance of law and order. We have discussed at length the inadequacies of the Ministry in this regard leading to the general dilution of administrative standards. It may however be maintained that repeated threats to law and order cannot be checked merely by streamlining the administration, deployment of CRP or the Armed Forces. It

should be invariably accompanied by corresponding efforts to bring about a drastic change in the socio-economic infra-structure of the polity and inculcation of social ethos in the community as a whole. The problem of law and order in a poverty-ridden country is bound to assume Himalayan dimensions. There can be neither law nor order unless the economic conditions of the masses is improved and in the absence of peace and tranquillity, no reforms, however sound they might be, can successfully be implemented. An objective analysis of the law and order situation since the past two decades reveal constant turmoil and confusion in the State. The situation calls for a proper fixation of priorities in place of vague and solemn generalities and a reorientation of the whole administrative set up with a view to establishing a new administrative hierarchy having the objectives of a planned eradication of the factors responsible for disturbing the peace.

Communal Violence

Communal riots continue to take place with shocking regularity and increasing intensity. This harrowing experience of communal killings is no longer confined to anyone region or state. It has engulfed the entire sub-continent and the germs of this virus are to be found with only a slight difference of degree from Kashmir to Cape Camerin. One reason for this recurring phenomenon can undoubtedly be traced to the inadequacy and inefficiency of the administrative agencies operating under the auspices of the Home Ministry. It is evident that there can be no fool-proof system to stop these ghastly crimes, but their incidence can certainly be minimised, if there is determination to do it. Administrative or judicial enquiries would be a mere

moonshine unless they are prompt and are followed by exemplary punishment to the guilty. The judicial enquiries held so far have failed to result in any convictions or deterrent steps, the reason for which being the absence of a determined will to take drastic steps against the miscreants by the various agencies working under the Home Ministry. The growing communal threat has to be tackled on various planes -- political, administrative, cultural, social and educational. Politically the ruling party can fight the forces preaching communal hatred and bigotry through secular and socialistic programmes. It sounds ironical that in India, there is hardly any political party which does not claim to be secular, democratic and socialistic. Mere ceremonial approach or lip-homage to secularism is no solution to the communal menace. Administrative action against persons or parties preaching obscuratist philosophy is to be taken and be effectively dealt with under the penal laws of the land. The social barriers on grounds of caste, creed, region and language, although constitute penal offences are still very much in vogue. The eradication of untouchability by a constitutional provision had made practically little difference. The age-old practice of untouchability is still most common in the interior of the country, and in some places it is a common practice in the towns also, the states of Andhra Pradesh and Madhya Pradesh being in the forefront. A radical reform of the courses that are taught at various educational institutions is also to be undertaken. The teachings of tendentious history, the deliberate distortion of facts have to be seriously curtailed. An all India educational policy in this regard be chalked out in consultation with the Ministries of Education at the Centre and the States. Mutual appreciation

for each other's cultures would ultimately lead to a near fusion or a mosaic of cultures creating harmony and goodwill and a genuine attachment to whatever is truly Indian, from whichever religious denomination it might emanate. Communalism should be treated as a dangerous virus. Whatever be the brand, the strategy is the same, namely, feeding constantly on mutual fears and suspicions, exploiting every insignificant incident to unimaginable proportions and creating the most sordid picture of tension through the instrumentality of barbarism, the incidence of which has gone up in the recent past. There should be constant emphasis on the need to check the deliberate distortion of history, publication of tendentious text-books, yellow journalism, para-military organisations functioning under the guise of cultural or religious revivalism and the groups preaching religious fanaticism. A code of conduct making it obligatory for political parties to refrain from entering into any alliance with communal organisations is to be evolved. Y.B. Chavan, while referring to the communal situation admitted in the Lok Sabha that the main reason for it was the slogan of Indianisation given by some parties and thus creating doubts about the loyalty of a section of people.¹² The realisation is omnipresent but the urge to nip the mischief in bud is seriously lacking, consequently the communal parties did not refrain from exploiting the situation even on the slightest pretext. There is a proposal to provide for Special Courts to hold summary trials in areas affected by the communal frenzy. This is a constructive suggestion but it would cure only the symptoms but will not in any way reach the root of

12. The Hindustan Times, April 4, 1970.

the problem. The intelligence cells in the Home Ministry need to be further strengthened. It is, in fact, a sad commentary on the intelligence machinery that despite clear indications, trouble could not be averted in Ahmedabad and Bhiwandi.

Justice without liberty is a misnomer. It can be attained not through the sweeping provisions of laws like the Preventive Detention Act but through recognising and enforcing the supremacy of law. Social change and the creation of democratic atmosphere very often results in conflicts between State and the citizen. The administrative genius lies in minimising such conflicts so that the very foundations of democracy are not jeopardised. Close and constant liaison between the Home Ministry and the Law Ministry would be beneficial for strengthening the Rule of Law. Time and again the Law Ministry had come forward with valuable suggestions on a variety of problems. Not all suggestions can, however, be considered feasible or sound. For instance, its latest opinion (reported to have been offered to the ARC) that an inter-state council on the lines provided in Article 263 of the Constitution is ineffective in improving Centre-State relations, if not superfluous can only mean that the Union Government is averse to its actions being discussed in any body where it may not be able to have the last word.¹³ The recommendations under Article 263 are not mandatory but the composition is such that no Government can easily disregard it without serious consequences. An early action towards the setting up of such a Council will definitely bring about a change in the present deteriorating relations between the Centre

13. The Statesman (New Delhi), January 15, 1969.

and the States.

Despite the reforms in various aspects of administration, the fact remains that they have not been able to cope up with the expectations of the public. To the inarticulate persons, who constitute the bulk of India's population, minor administrative adjustments, organisation and reorganisation of Ministries and Departments have no meaning in the absence of a clean administration. A feeling is rampant among all the discerning and vocal sections of the people that the administration has failed to deliver the goods in the manner characteristic of sluggish democratic governments, and, as a result, corruption, administrative slackness, inefficiency and official high-handedness still persists. Some of the complaints are slightly over-exaggerated but still these dark patches on the administrative canvas cannot be altogether ruled out. How far the establishment of Lokpal and Lokyuktas will diminish the area of corruption and streamline the quest for integrity in administration is yet to be seen. What steps would the Home Ministry take towards safeguarding liberty of citizens, protection of minorities and in lessening the hectic tension between the states and the Centre is still a live issue which might approach settlement in course of time.

Appendix I

Ministry of Home Affairs

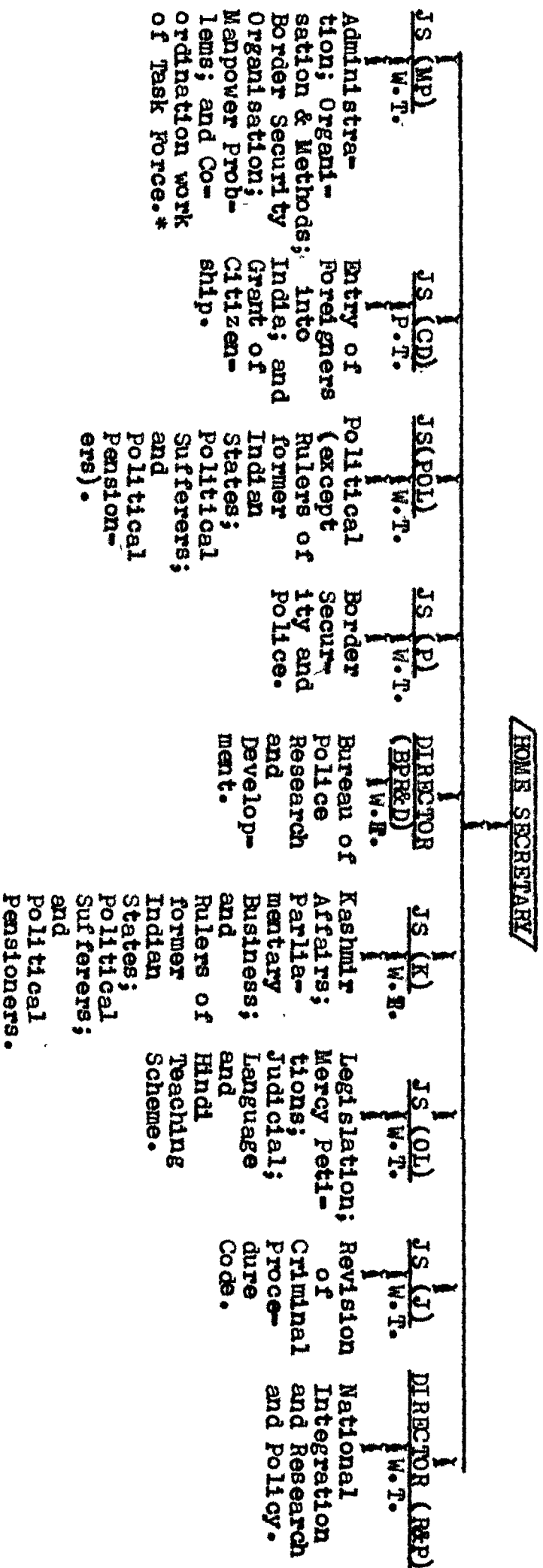
I (1) - FUNCTIONAL CHARTHome SecretarySpecial Secretary (Union Territories)Additional Secretary (Administrative Reforms)Additional Secretary

The following is the distribution of work among the Home Secretary, the Special Secretary (Union Territories), the Additional Secretary (Administrative Reforms) and the Additional Secretary:-

- (A) (1) Law & Order, Judicial, Administrative Reforms, Relations with States Language, Kashmir, Kutch, Border Security, I.B., Foreign Nationals, Minorities, Rulers of former Indian States, Manpower, Administration and Secretariat Security Organisation. Home Secretary
- (2) Union Territories, Union Territories cadres for IAS and IPS, Civil Services and Police Cadres for Union Territories, Re-organisation of States, Nefai, Indian Frontier Administrative Service, Zonal Councils, Budget, Delhi Flood Co-ordinating Committee, Land Reforms, Census, Civil Defence and Emergency Relief. Special Secretary (Union Territories)
- (3) Administrative Reforms Addl. Secretary (AR)
- (4) Matters relating to West Bengal Addl. Secretary
- (B) Home Secretary is in general charge of the Ministry. The following matters should be submitted to him:-
- (1) matters relating to officers of the rank of Deputy Secretary and above;
 (ii) proposal relating to selection and release of Under Secretaries; and
 (iii) annual confidential reports on all officers of and above the rank of Under Secretary.
- (C) Home Secretary is concurrently Secretary in the Deptt. of Justice under the Ministry of Law and Justice.

Appendix II

FUNCTIONAL CHART (DIVISION-WISE)



NOTE: JS (CD) has been shown both under the Home Secretary and the Special Secretary (Union Territories) as part of his work goes to each of them.

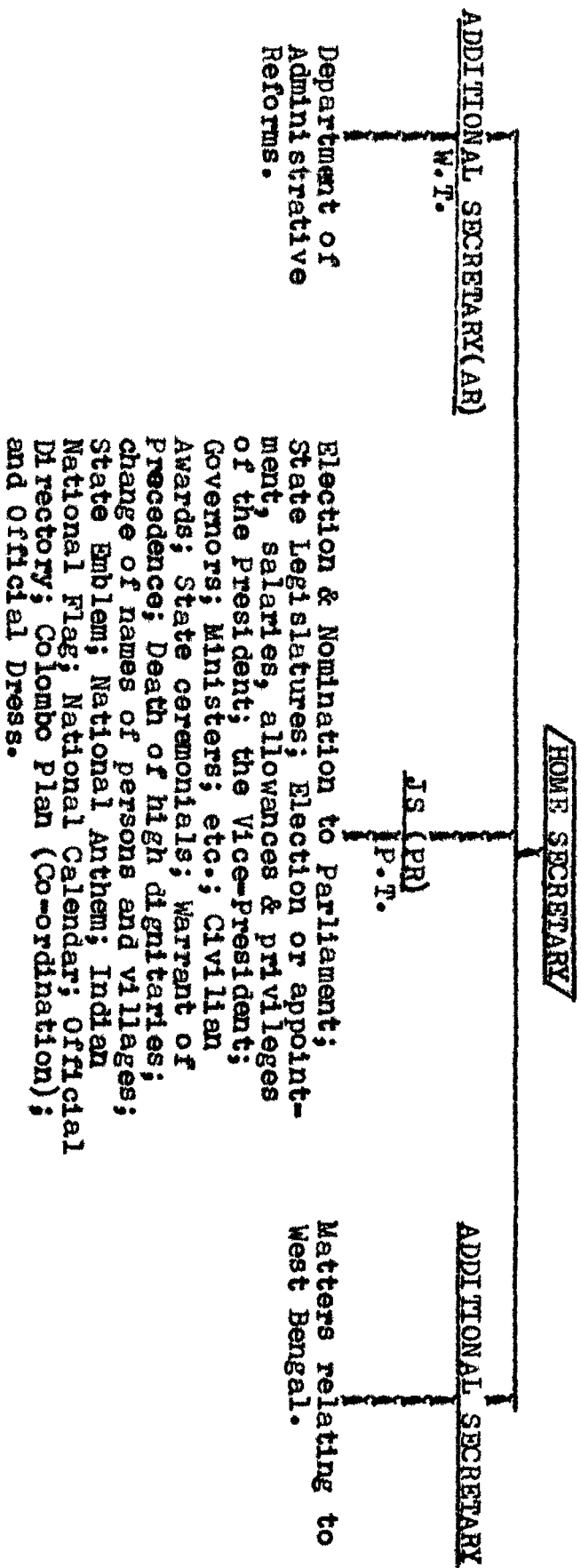
W.T. = Whole Time

P.T. = Part Time

*Task Force work is being handled by DS (HC) who is concurrently Deputy Secretary, Ministry of Home Affairs also.

JS (OL) has also been appointed concurrently Joint Secretary in the Deptt. of Justice.

Appendix III

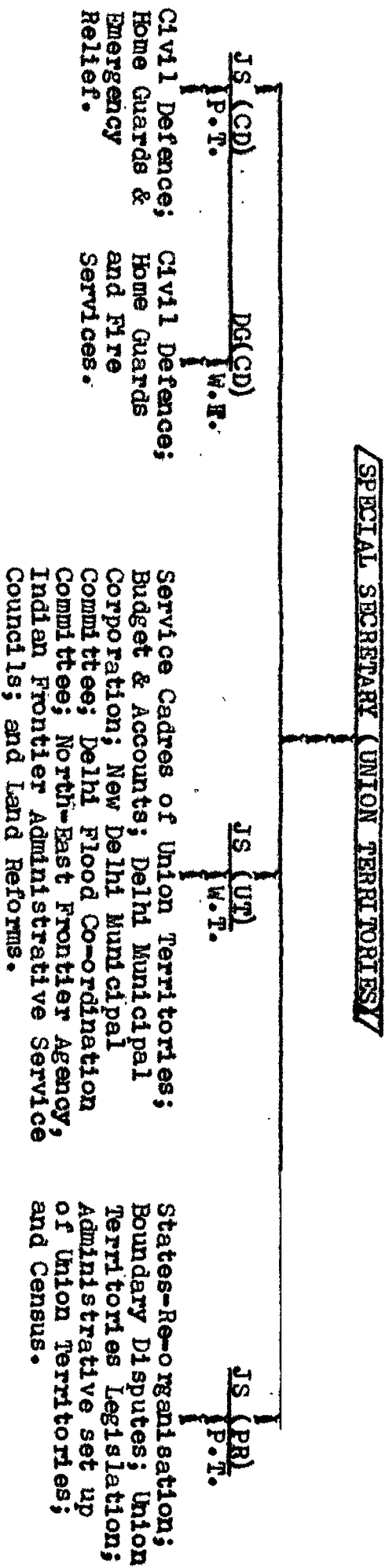


NOTE: J.S. (PR) has been shown both under the Home Secretary and the Special Secretary (Union Territories) as part of his work goes to each of them.

W.T. = Whole Time

P.T. = Part Time

Appendix IV



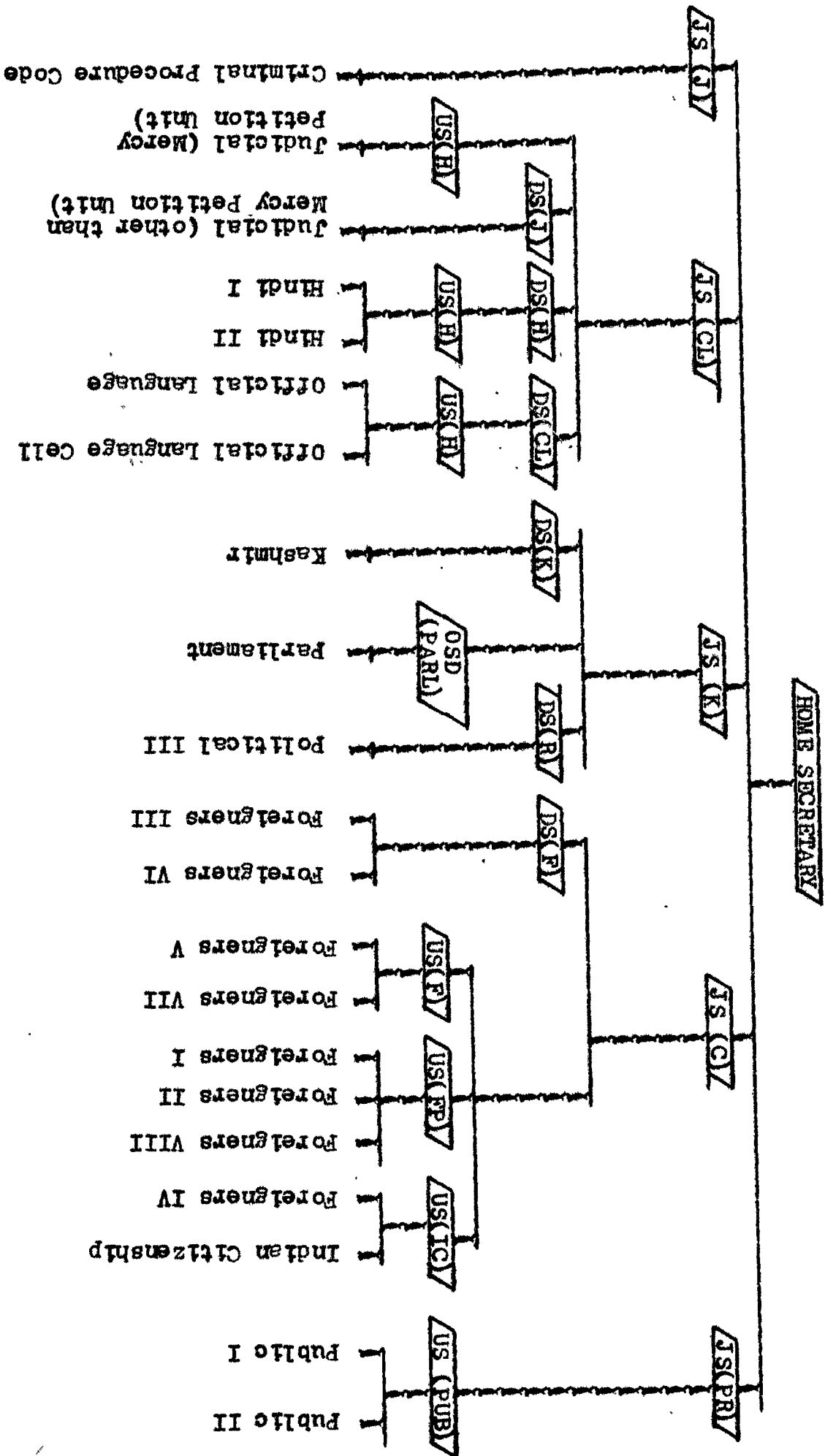
NOTE: JS(CD) & JS(PR) have been shown both under the Home Secretary and the Special Secretary (Union Territories) as part of their work go to each of them.

W.T. = Whole Time

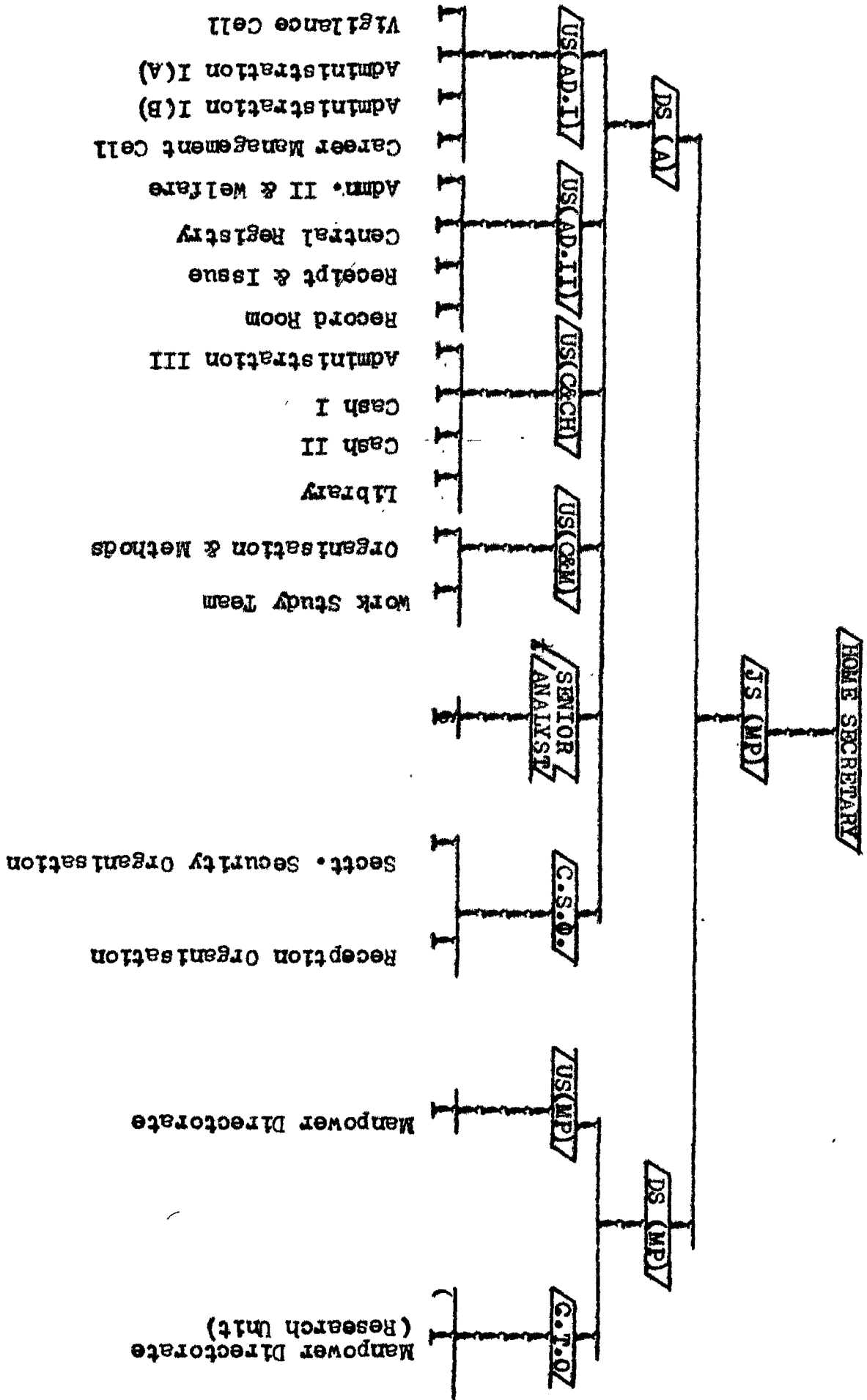
P.T. = Part Time

Appendix V

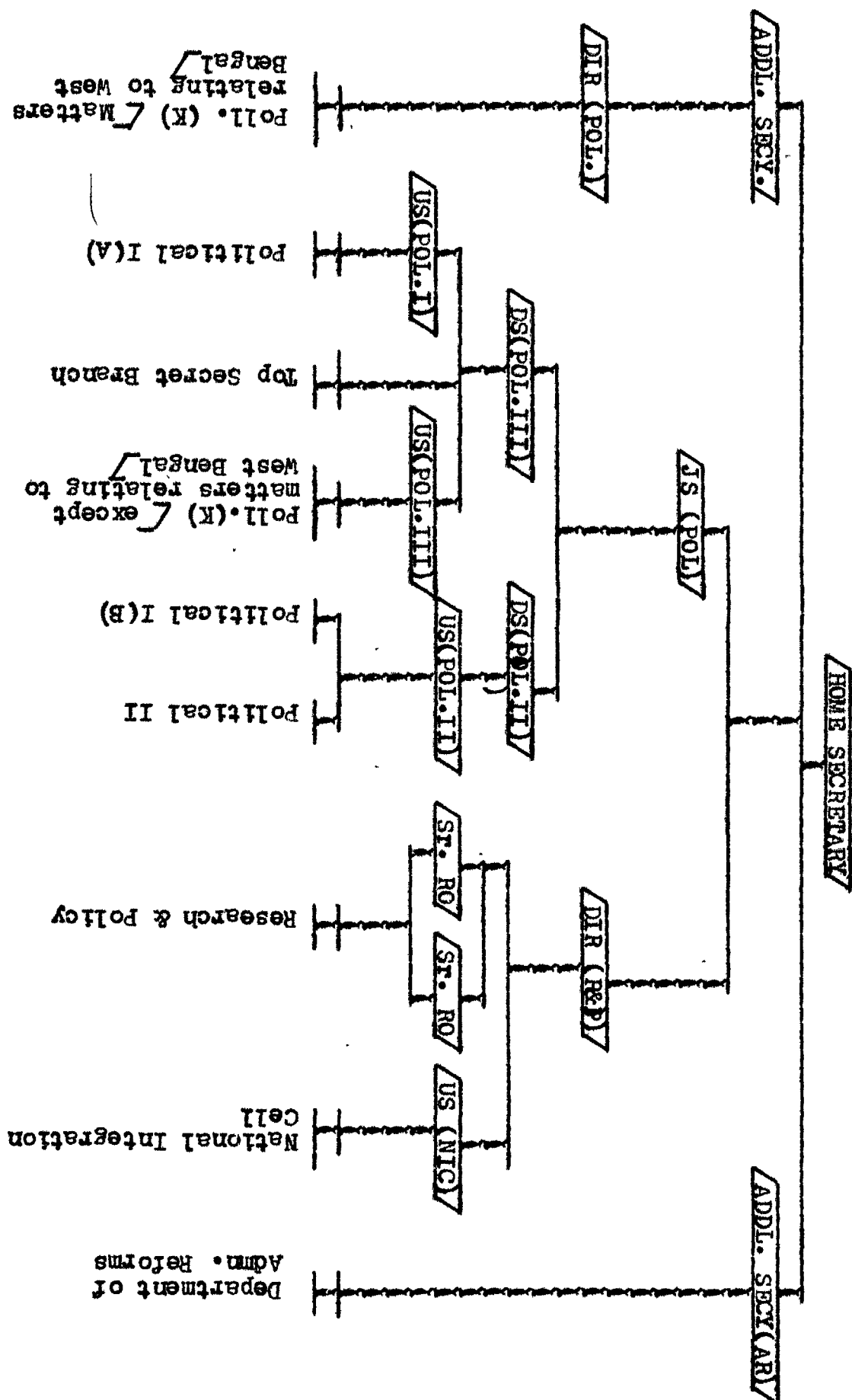
I (11) - ORGANISATIONAL CHART



Appendix VI

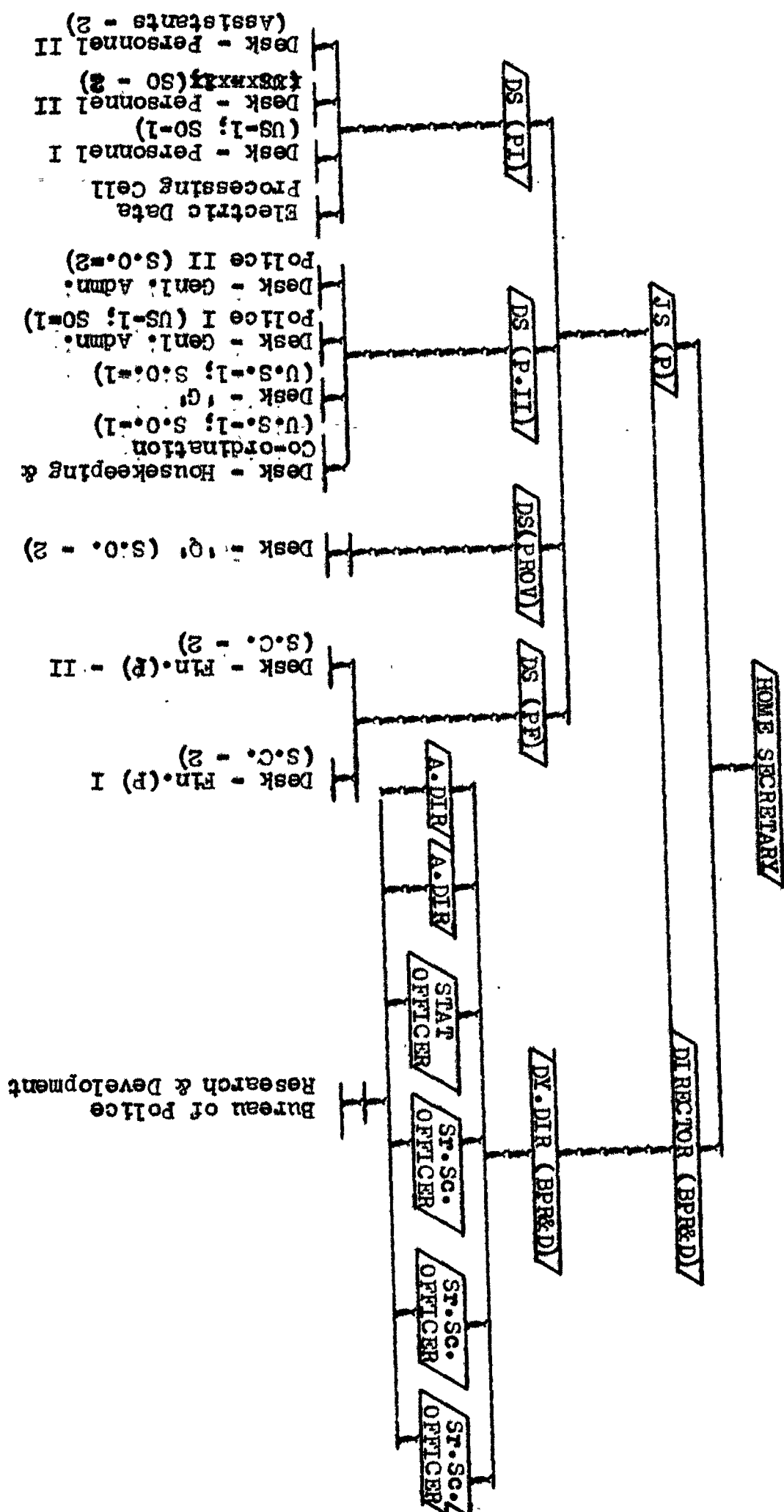


Appendix VII

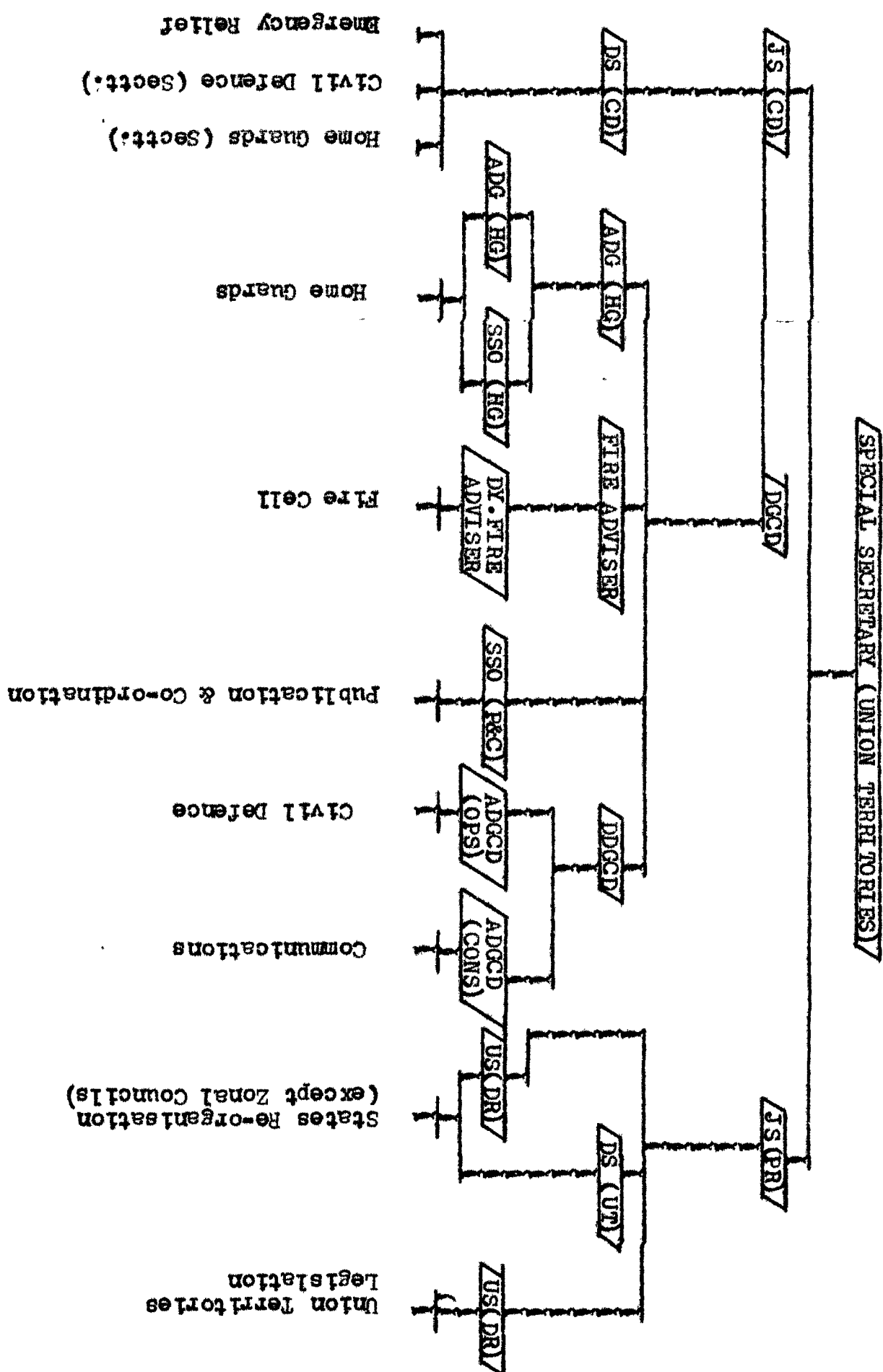


*Temporary allocation to D.S. (Pol. III).

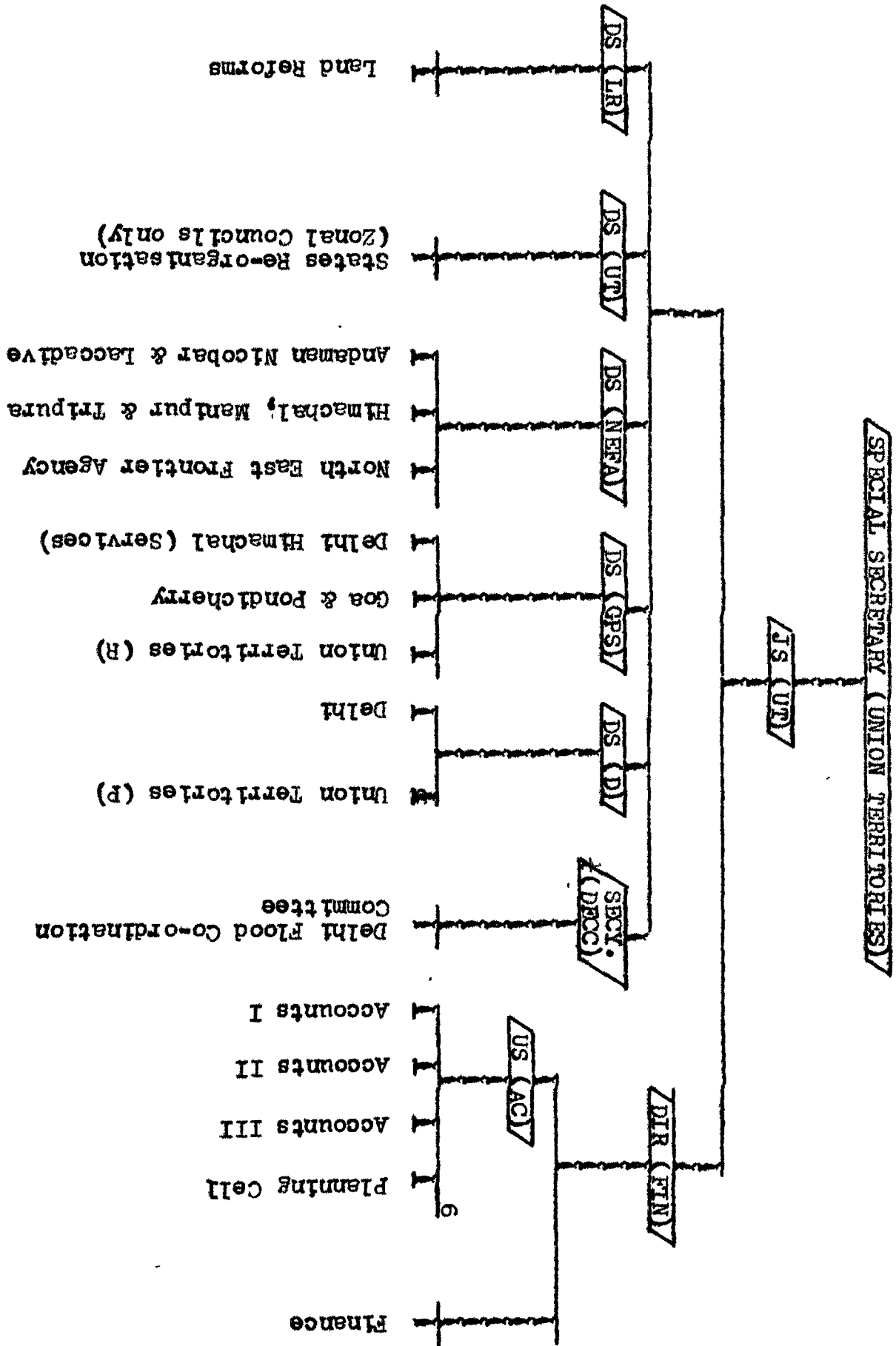
Appendix VIII



Appendix IX

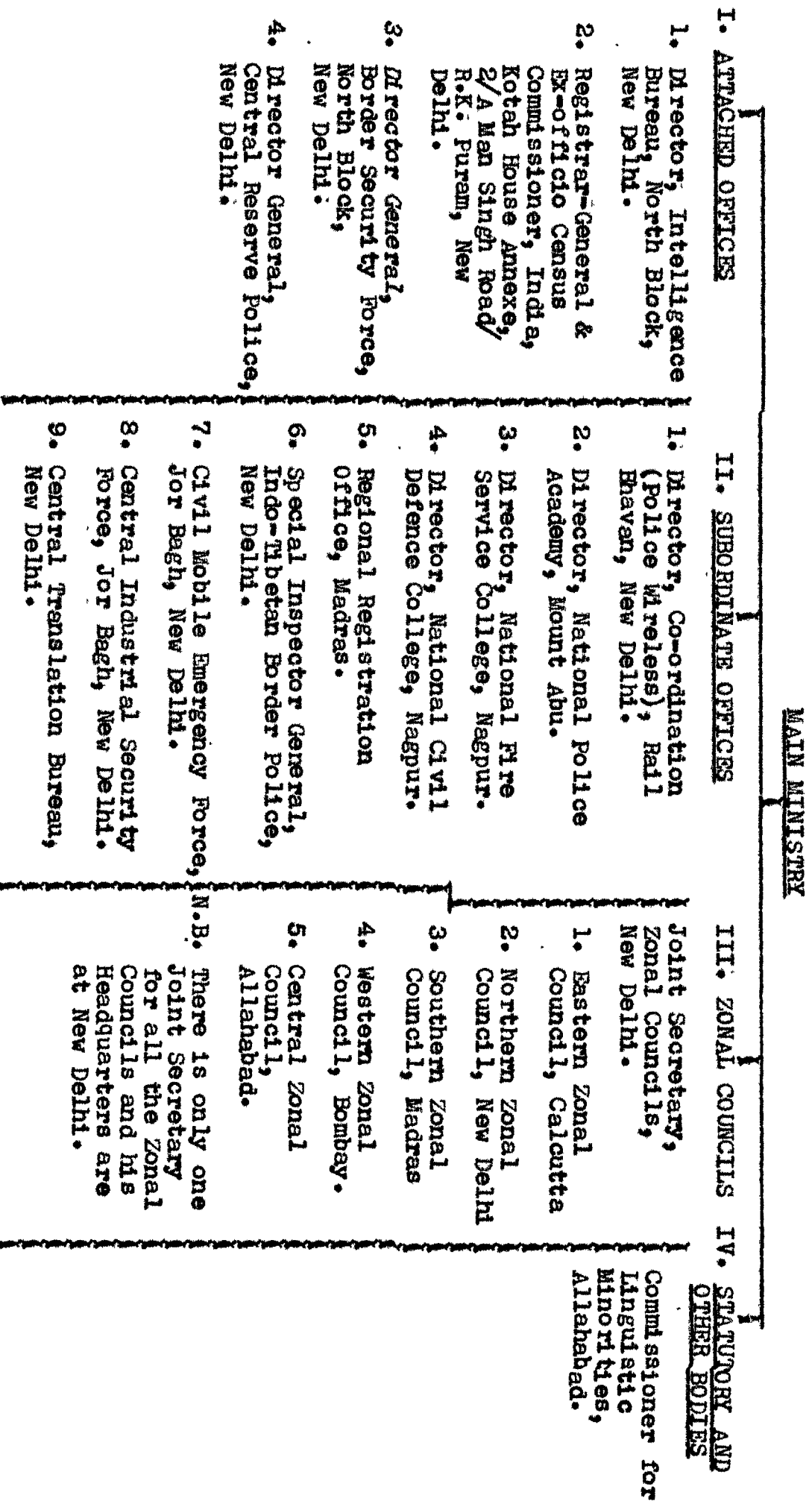


Appendix X



Appendix XI

I (1v) - ORGANISATIONAL CHART SHOWING ATTACHED, SUBORDINATE OFFICES, ZONAL COUNCILS AND STATUTORY BODIES, ETC.
(INDICATING THE HEAD OF OFFICE)



/CONTINUED/

MAIN MINISTRY

I. ATTACHED OFFICES

II. SUBORDINATE OFFICES

III. ZONAL COUNCILS

**IV. STATUTORY
AND OTHER
BODIES**

HINDI TEACHING SCHEME

10. Regional Office, Hindi Teaching Scheme, Northern Region, Jamnagar House, New Delhi.
11. Regional Office, Hindi Teaching Scheme, Western Region, Maneckji Wadia Building, Bell Lane, Bombay.
12. Regional Office, Hindi Teaching Scheme, Eastern Region, 25, Earn Mansion, 10-Government Place (East) Calcutta-1.
13. Regional Office, Hindi Teaching Scheme, Southern Region, Shastri Bhavan, No. 35 Haddow Road, Madras-6.

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- ii. Personnel Administration, 1969.
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